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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 588 (ER)

5 AHMED MOHAMMED EL GAMMAL,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 18, 2017
9:15 a.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BRENDAN F. QUIGLEY

17 NEGAR TEKEEI

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18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK, INC.

Attorneys for Defendant

20 BY: SABRINA SHROFF

ANNALISA MIRÓN

21 DANIEL G. HABIB

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(Trial resumed; jury not present)

THE COURT: Are we all ready? I figure we can take care of a little business before we start.

Currently outstanding, I did receive the defense submission concerning the government's request for a limiting instruction to be given to the jury whenever some mention of Mr. El-Gammal's activities in his day-to-day life in Phoenix was mentioned and the request to admit Mr. Mateen's voting records. Both motions are denied.

I think that with respect to those activities of Mr. El-Gammal's that the defense has highlighted both his -- and, by the way, I do think that they have limited, in some fashion, although I think that they emphasize it just slightly more than the defense has categorized it, it has been a limited presentation and it is the type of argument that I believe the government can respond to in its summation, and certainly there will be a jury instruction which the jury will have with them as they deliberate, that Mr. El-Gammal did not need to be a member of ISIS in order to have carried out these alleged activities.

With respect to the Mateen voting records, I could almost do it on 403 grounds alone, particularly given the most recent activity in that case. The jury has been told not to read about this case, they have not been told not to read about any other cases and it has been front page news over the last

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1 couple of days that Mr. Mateen's wife has just been arrested.
2 In addition, Mr. Mateen is alleged to have carried out the
3 largest terrorism act since 9/11. It is a very, very different
4 type of case and, as the defense points out, has not been
5 determined that it had anything to do with ISIS.

6 And so, for those reasons, I don't think it would be
7 appropriate to allow the government to introduce Mr. Mateen's
8 records in order to show that, on occasion, some alleged
9 members of ISIS behave in ways contrary to a strict ISIS
10 orthodoxy. So, that is the Court's ruling on those two issues.

11 Now, as far as I am aware, the only thing that is
12 outstanding right now in terms of motions that have been made
13 is the defense motion to cross-examine the elder
14 Mr. El- Goarany with respect to his more recent fraud
15 conviction. That's still outstanding and I am still deferring
16 on that.

17 MR. DEFILIPPIS: Your Honor, I think we can dispose of
18 that. The government will not oppose cross-examination on that
19 issue.

20 THE COURT: Very well.

21 Yes, Mr. Habib?

22 MR. HABIB: Thank you. We did want to -- if the Court
23 is done, we wanted to front one more possible issue that may
24 arise this morning.

25 THE COURT: Sure.

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1 MR. HABIB: So, it is conceivable that during the
2 cross-examination of Tarek El Goarany, when it resumes, the
3 defense will seek to introduce GX- , I believe it is 145, which
4 is Samy El- Goarany's so-called exculpatory YouTube video. The
5 Court has already ruled that the video is admissible. We may
6 seek to introduce it on cross.

7 THE COURT: Okay.

8 Will there be an objection to that?

9 MR. QUIGLEY: Your Honor, I don't think he has ever --
10 I mean, there is a foundational issue that he has ever seen
11 that. It comes in -- it came in as co-conspirator statement,
12 that's how the Court ruled it admissible. Of course, the
13 defense does not have a parallel ability to offer
14 co-conspirator statements. The Court found in its ruling on
15 the motion *in limine* that his statement was admissible as a
16 co-conspirator statement of the conspiracy involving the
17 defendant, Attiya, and Samy El- Goarany. Of course, there is
18 no conspiracy between the government and Samy El- Goarany so I
19 don't think it is appropriate for the defense to offer it.

20 THE COURT: Mr. Habib, go ahead.

21 MR. HABIB: Two brief points.

22 One, as to foundation, Tarek can certainly testify
23 that his brother is the person depicted in the video. As to
24 hearsay, the defense would be proffering it pursuant to Rule
25 806 which allows impeachment of a hearsay declaration with an

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1 inconsistent statement. Yesterday the government elicited from
2 Tarek El Goarany Samy's statement that Mr. El-Gammal, quote,
3 helped him, and in this video Samy makes an inconsistent
4 statement, he says that no one helped me including
5 Mr. El-Gammal so we don't need it to qualify the exhibit for
6 admission, it comes in under 806.

7 Yes; and, in addition, the government elicited from
8 Tarek El Goarany that Samy had said Mr. El-Gammal helped him,
9 quote, in the vaguest of terms. That was Tarek's
10 characterization of Samy's statement. The YouTube video is not
11 vague at all, it is quite specific and direct in denying
12 Mr. El-Gammal's participation.

13 MR. QUIGLEY: Your Honor, I think on the impeachment
14 issue it doesn't mean it can come in as substantive evidence.
15 Again, the statement was admitted as a co-conspirator statement
16 which, because the conspiracy here involved the defendant and
17 two other people and not the government and two other people,
18 it can't be introduced by the defense on that basis.

19 MR. HABIB: Your Honor, Rule 806 says the Court may
20 admit evidence of the declarant's inconsistent statement.

21 THE COURT: That is may.

22 MR. HABIB: That is, obviously, as all evidentiary
23 rulings are, subject to the Court's discretion, but we also
24 cited in a filing a few days ago and I think the filing in
25 response to the government's motion to preclude Attiya, that

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1 despite the discretionary language of the rule, both Weinstein
2 and some circuit case law cited in that motion indicate that
3 once a hearsay statement has been admitted, the Court's
4 discretion is constrained and if the defense proffers an
5 inconsistent statement, the Court must admit it as substantive
6 evidence. I can dig up the citations if the Court wants but I
7 do remember citing it.

8 THE COURT: Yes, you did.

9 Mr. Quigley?

10 MR. QUIGLEY: Again, your Honor, I think it comes in
11 as a co-conspirator statement. That was the Court's ruling.
12 They can certainly impeach him on it but I don't think it
13 should be admitted as substantive evidence with Tarek
14 El Goarany on the stand.

15 THE COURT: What does that mean, that they can impeach
16 him on it?

17 MR. QUIGLEY: They can ask him about it but I don't
18 think they should publish it to the jury with Tarek on the
19 stand.

20 THE COURT: I will not allow the defense to put in the
21 video.

22 Anything else?

23 MR. QUIGLEY: Not from us, your Honor.

24 THE COURT: We have got five minutes, so. I am right
25 that there is nothing more on my docket to decide, at least

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1 that's pending?

2 MR. QUIGLEY: Not from us, your Honor.

3 THE COURT: But we have Mr. Patel.

4 MR. PATEL: I submitted a proposed order to your
5 Honor's chambers.

6 THE COURT: That will be executed.

7 MR. PATEL: Thank you.

8 MR. HABIB: Your Honor, may I clarify?

9 Is the Court's ruling that we can question Tarek about
10 this video?

11 THE COURT: Yes.

12 MR. HABIB: Can we show him the video?

13 THE COURT: You can show him the video.

14 MR. HABIB: We cannot publish the video?

15 THE COURT: Correct.

16 MS. SHROFF: We can show him the video though?

17 THE COURT: Yes.

18 I take it, by the way, that he has seen the video?

19 MS. TEKEEI: Your Honor, we have not shown him the
20 video. He has not seen the video, as far as we are aware,
21 which is another reason why we don't think he should be shown
22 the video.

23 MR. HABIB: He can be asked if he has seen the video.

24 THE COURT: Yes.

25 Didn't it appear on YouTube? Is that how it came

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1 about?

2 MS. TEKEEI: It did, your Honor. However, the link to
3 which it is accessed by YouTube is not --

4 MS. SHROFF: Actually, the link is there. We checked
5 last night.

6 MS. TEKEEI: Excuse me. It is not public in terms of
7 out there for the world to see at this point, as far as we're
8 aware. You can click on the link and you can see it but the
9 actual link is not a publicized fact.

10 THE COURT: Was it once upon a time?

11 MS. TEKEEI: It was sent from Mr. Aboualala to another
12 individual over Facebook. While it is posted and publicly
13 available it is not, how do I say -- not everybody knows that
14 that link exists and where it is available on YouTube.

15 MS. SHROFF: Your Honor, before the government
16 produced it to us in discovery, long before they produced it
17 Mr. Quigley handed it to me in court. I found that video on
18 YouTube just with no investigative skills or any other skills.

19 THE COURT: So you found it as a member of the general
20 public?

21 MS. SHROFF: That's all I am.

22 THE COURT: Okay. I mean, if he hasn't seen it he
23 hasn't seen it.

24 Okay. Are we ready? Is Mr. El- Goarany here?

25 MS. TEKEEI: I will go check, your Honor.

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1 THE COURT: Okay.

2 Are you ready to proceed, Ms. Shroff?

3 MS. SHROFF: I am, your Honor. If he is not here I'm
4 going to use the ladies room. If not, I'm going to just start.

5 THE COURT: Yes.

6 MS. SHROFF: He is not here yet, your Honor.

7 THE COURT: Why is that?

8 (Pause)

9 THE COURT: Is he here?

10 MS. TEKEEI: Someone is checking the security line to
11 see if he is in the security line. We understand from
12 Mr. Patel that he was very close by 10 minutes ago.

13 THE COURT: This is the second time now that he has
14 detained us so talk to him, will you?

15 MS. TEKEEI: Your Honor, he is on cross so we have not
16 talked to him but we will make it clear.

17 THE COURT: You can tell him to be on time or tell
18 Mr. Patel to tell him to be on time.

19 MS. TEKEEI: Yes, your Honor.

20 (Pause)

21 MS. SHROFF: Your Honor, while we are waiting may we
22 deal with the exhibits? I did not move them into evidence
23 yesterday and would so move now.

24 THE COURT: Okay. Is there any objection? I don't
25 know what exhibits, exactly, you're talking about.

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1 MS. SHROFF: 113-BB, 111-CC, and 140-AA.

2 THE COURT: Okay.

3 We are going to get the jury. You can step up,

4 Mr. El- Goarany.

5 I take it you are still looking at those exhibits?

6 MR. QUIGLEY: Yes, your Honor.

7 THE COURT: Okay.

8 (Witness resumes the stand)

9 MS. SHROFF: May I, your Honor?

10 THE COURT: You may. Absolutely.

11 MS. SHROFF: Thank you.

12 THE COURT: By the way, for the marshals, I have a
13 criminal matter here at 12:30. That won't be a problem for you
14 folks, right?

15 THE MARSHAL: No, your Honor.

16 (Continued on next page)

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T. El-Goarany - cross

1 (Jury present)

2 THE COURT: Everyone, please, be seated.

3 Ladies and gentlemen of the jury, thank you, again,
4 for being so prompt. We continue with the cross-examination of
5 Mr. Tarek El Goarany.

6 TAREK EL-GOARANY, resumed.

7 THE COURT: Ms. Shroff?

8 CROSS EXAMINATION (Continuing)

9 BY MS. SHROFF:

10 Q. Good morning.

11 A. Good morning.

12 Q. We covered some ground yesterday and one of the things we
13 discussed yesterday was your father's trip to Turkey in May
14 2015, correct?

15 A. Correct.

16 Q. And you knew that your father was going to go to Turkey,
17 correct? He had told you that?

18 A. Yes, I do.

19 Q. And he told you the purpose, he told you he wanted to trace
20 the route Samy took, correct?

21 A. Correct.

22 Q. And you and he had a conversation about what he hoped to
23 accomplish before your father left for Turkey, correct?

24 A. That's correct.

25 Q. And your father told you what he was going to do in Turkey

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T. El-Goarany - cross

1 and what he hoped to accomplish, correct?

2 A. Yes.

3 Q. And you told him all that you knew about Samy up until that
4 point, correct? You didn't keep him in the dark right before
5 he was going to Turkey, did you?

6 A. I don't -- I don't remember what I said.

7 Q. Well, your mom had already found Attiya's phone number by
8 then, correct?

9 A. I don't remember. I don't remember. Sorry.

10 Q. Your whole family had had a slew of conversations about who
11 knew what, correct?

12 A. We discussed certain things, yeah. Yeah, we discussed
13 things.

14 Q. Right.

15 And you knew that this trip was really important to
16 your father; he was going all the way to Turkey, correct?

17 A. Yes. It was important to all of us.

18 Q. Right.

19 And you made sure, because it was important to all of
20 you including you, that you told him everything you knew up
21 until that point, correct?

22 A. I don't remember exactly what I told him.

23 Q. Fair enough.

24 So, let me just ask you this. While he was in Turkey,
25 do you recall having Facebook interactions with Samy?

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T. El-Goarany - cross

1 A. Yes.

2 Q. And you recall one of the Facebook interactions was you
3 letting Samy know that dad was in Istanbul, correct?

4 A. That's correct.

5 Q. Right.

6 And you told him that -- by him I mean Samy -- you
7 told Samy that dad wants to talk to you, to see your face;
8 correct?

9 A. Yeah.

10 Q. And you told him, Samy, that dad has zero intention of
11 convincing you to come back or anything like that, correct?

12 A. Correct.

13 Q. And then you told Samy he told me that himself -- he being
14 your dad -- in a very serious conversation, correct?

15 A. Yeah.

16 Q. Seems like you had a very serious conversation with your
17 dad before he left to Turkey, correct?

18 A. He told me his intentions, yeah.

19 Q. Now, before your dad left for Turkey you, yourself, had
20 seen Samy online, correct, even though -- is that correct? Do
21 you recall that in April of -- April 11th through April 15th,
22 sometime during that time period?

23 A. Yeah.

24 Q. Let me just show you what is marked as a Government Exhibit
25 and make sure that this is the conversation we are both talking

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T. El-Goarany - cross

1 about. Can you see that, sir?

2 A. Yes, I can.

3 Q. And this is on April 15th, 2015, right?

4 A. Yes.

5 Q. And you tell your brother that you are sure that he can see
6 your messages because you see Samy online, correct?

7 A. That's what I said, yeah. I didn't --

8 Q. Okay.

9 A. I didn't know who was -- I assume it was Samy but I didn't
10 know for certain who was viewing the messages.

11 Q. Well, that's not true, right? You say: At least I have
12 some comfort knowing -- not hoping -- knowing that you can see
13 my messages.

14 A. Yeah. What I meant by that is when you're -- there is read
15 receipts on Facebook so it can show if somebody read your
16 message. And it showed that that profile, Samy's profile read
17 that message but I don't know if that was Samy or someone else
18 because he hadn't responded until much later.

19 Q. But he doesn't respond much later. He responds later but
20 let's just stick to this message here, though.

21 As far as you can tell when you are writing that you
22 don't say: And I hope it is you brother, not someone else;
23 correct?

24 A. No, I don't say that.

25 Q. Right.

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T. El-Goarany - cross

1 In fact, you say: Hey bro -- and I am going to the
2 first section -- just want to know if you're safe and I would
3 like to hear from you. I love you and I wish you all the best.

4 Right? And that's literally four days before, if my
5 math is correct. And then on the 15th you say -- because
6 something must have happened to give you discomfort -- you say,
7 at least I have some comfort knowing.

8 Correct? That's what you say?

9 A. Yeah, knowing that he can read my messages.

10 Q. Right.

11 A. But I didn't know if it was Samy or not.

12 Q. Okay.

13 As far as you're concerned, you're talking to Samy but
14 you're not sure it is Samy. That is your testimony here today?

15 A. That is my testimony, yeah.

16 Q. Okay.

17 And did you, by then, sir, have several conversations
18 with Samy exactly through this methodology?

19 A. I hadn't talked to Samy for a while when I --

20 Q. No, no.

21 MS. TEKEEI: Objection.

22 Q. I am talking when you are on Facebook with Samy.

23 THE COURT: Overruled.

24 Q. In all the years you talked to Samy this is one of the ways
25 you talked to Samy, correct?

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T. El-Goarany - cross

1 A. Yeah. Facebook was a way we conversed, yeah.

2 Q. Thank you. You may take that down.

3 Now, one of the other topics we discussed yesterday
4 was you telling your dad that your father was in Istanbul and
5 he was staying in the first hotel you went to. Do you recall
6 that?

7 Can we put up Exhibit 111-CC?

8 A. I don't remember saying 'first hotel' but I remember saying
9 that I told Samy that my dad was staying at the hotel he stayed
10 at.

11 MS. TEKEEI: Your Honor, this exhibit is not yet in
12 evidence.

13 MS. SHROFF: It's all right. I will show it to you to
14 refresh your recollection since you can't remember.

15 A. Okay.

16 Q. Does that refresh your recollection, sir?

17 A. I mean, I see that I wrote that. I don't know why I would
18 say first hotel, but.

19 Q. That wasn't the question.

20 A. Okay.

21 Q. My question was does that refresh your recollection that is
22 in fact what you said. Yes or no.

23 A. No.

24 Q. Okay.

25 MS. SHROFF: Your Honor, we move this document into

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T. El-Goarany - cross

1 evidence at this time.

2 MS. TEKEEI: No objection, your Honor.

3 THE COURT: Very well. That's 111-CC?

4 MS. SHROFF: Yes, your Honor.

5 THE COURT: That will be received.

6 (Defendant's Exhibit 111-CC received in evidence)

7 BY MS. SHROFF:

8 Q. Now, one of the other questions I asked you yesterday,
9 Mr. El- Goarany, was whether or not you and Ms. Tekeei had
10 reviewed, during your preparation here for this trial, the
11 conversation and exchanges you had with your cousin Ahmed. Do
12 you recall that question?

13 A. I do.

14 MS. TEKEEI: Objection. Relevance.

15 THE COURT: Overruled.

16 A. I do recall that question.

17 BY MS. SHROFF:

18 Q. And she did not review those conversations with you,
19 correct, during your preparation for this trial and your
20 testimony here today?

21 A. Yeah. That's correct.

22 Q. She did not, correct?

23 A. No.

24 Q. So, in the eleven times you met with her she went through
25 all the documents that she used in her direct testimony of you,

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T. El-Goarany - cross

1 correct?

2 A. And others, yeah.

3 Q. Right.

4 She reviewed more but she certainly reviewed every
5 piece of evidence that has come into this trial through you,
6 correct? Yes or no. Hard to keep track when you met with her
7 11 times.

8 MS. TEKEEI: Objection.

9 A. I don't --

10 THE COURT: Sustained.

11 Q. Do you recall if you went through all of the documents,
12 Mr. El- Goarany?

13 A. We went through whatever we went through. I --

14 Q. Okay.

15 A. I wasn't in control of what we went through.

16 Q. Was there any document she put up during your direct
17 testimony that came as a surprise to you?

18 A. No.

19 Q. Thank you.

20 Now, one of the documents she went through with you,
21 sir, was your contract with them, your agreement with them;
22 correct?

23 A. Yeah. Yes.

24 Q. And you reviewed that document with Ms. Tekeei, correct?

25 A. Yes.

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T. El-Goarany - cross

1 Q. And you reviewed all of the clauses of that document with
2 her. She went over the document with you methodically,
3 correct?

4 A. We went over the document, yeah.

5 Q. We will get to that in a minute, though, but I want to take
6 you back now to your conversations with your brother Samy
7 El- Goarany while Samy was in ISIS, okay? That's the time
8 period.

9 Do you recall that once he was settled there he
10 started to reach out to people more frequently? Do you
11 remember that time frame?

12 A. Yeah. He reached out to people.

13 Q. Right.

14 You were one of them for sure, correct?

15 A. Yeah.

16 Q. And your parents were others that he reached out to,
17 correct?

18 A. Eventually, yeah.

19 Q. And he started to then reach out to people that were his
20 friends, correct?

21 A. Yeah.

22 Q. He reached out to Khalafalla Osman, correct?

23 A. He did.

24 Q. And he told Khalafalla Osman that I am now with the Islamic
25 State Dawla al Islamiyya?

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T. El-Goarany - cross

1 MS. TEKEEI: Objection, hearsay.

2 THE COURT: Overruled.

3 A. Yeah.

4 Q. And Khalafalla Osman was shocked, was he not, sir?

5 MS. TEKEEI: Objection.

6 THE COURT: Sustained.

7 Q. Didn't Khalafalla Osman tell you that he was shocked?

8 MS. TEKEEI: Objection.

9 THE COURT: Sustained.

10 Q. Did you have a conversation with Mr. Khalafalla Osman about
11 Samy being in the Islamic State?

12 A. Yeah.

13 Q. And during that conversation, Mr. Khalafalla Osman said to
14 you that he was shocked that Samy was there, correct?

15 MS. TEKEEI: Objection. Hearsay.

16 THE COURT: Sustained.

17 Q. Did Khalafalla Osman appear to you to be shocked by that
18 revelation?

19 MS. TEKEEI: Objection.

20 THE COURT: Overruled.

21 A. He -- we talked about it, yeah, and he was -- he was
22 shocked, yeah.

23 Q. And Khalafalla Osman's response to your brother was to tell
24 him to never contact him again, correct?

25 MS. TEKEEI: Objection. Hearsay.

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T. El-Goarany - cross

1 THE COURT: Sustained.

2 Q. Did Khalafalla Osman tell you that he never wanted him to
3 contact him again?

4 MS. TEKEEI: Objection.

5 THE COURT: Sustained.

6 Q. Mr. El- Goarany, did you tell Khalafalla Osman to not
7 contact or tell anyone else that Samy was in the Islamic State?

8 A. Yeah.

9 Q. You were mad at Khalafalla Osman were you not, sir?

10 A. I was surprised.

11 Q. No, you were upset with Mr. Osman; is that not true?

12 A. I was surprised.

13 Q. You were surprised?

14 A. Yes.

15 Q. And as a result of your surprise, Mr. El- Goarany, tell us
16 what you did.

17 A. We talked about it.

18 Q. Who is we?

19 A. Khalafalla and me.

20 Q. And what did you say to him?

21 A. I told him that I was surprised at his -- him involving or
22 telling others, other friends.

23 Q. You were upset were you not, sir, that Khalafalla Osman,
24 upon learning that Samy had joined the Islamic State, had
25 called Nico, had called Samir and had called others and told

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T. El-Goarany - cross

1 them that Samy was in the Islamic State, correct?

2 A. I was surprised at what he did because he didn't tell me he
3 was going to do it.

4 Q. And what did he do?

5 A. He told me that --

6 Q. No. What did he do that surprised you?

7 A. I'm getting there.

8 He told me that he informed Nico and Ali, which are
9 two of our -- my -- our mutual friends, about Samy being in
10 ISIS.

11 Q. And you told Khalafalla Osman not to tell anyone else that
12 Samy was in ISIS, correct?

13 A. Yes.

14 Q. You told him I have things under control, correct?

15 A. I don't remember saying that.

16 Q. Do you recall telling him I have been in touch with the
17 authorities from day one? Isn't that what you told Mr. Osman?

18 A. Yes. I told him that.

19 Q. That wasn't true, was it?

20 A. Well, I lied to the authorities but I was in touch with the
21 authorities, yeah.

22 Q. From day one?

23 A. From --

24 Q. Your first interview with them was when?

25 A. Early February, which was, like, seven days after Samy

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T. El-Goarany - cross

1 left.

2 Q. So not day one.

3 A. No.

4 Q. Eighth day, in fact.

5 A. Correct. It is a figure of speech.

6 Q. Now, you were so surprised, as you say, by Khalafalla's
7 disclosure to others that your brother was in the Islamic
8 State, that you discussed this with your brother when he called
9 you on August 1st, correct? Do you recall that?

10 MS. TEKEEI: Objection. Relevance.

11 THE COURT: Overruled.

12 A. Can you repeat the question? I'm sorry.

13 Q. Sure. Let's try it a different way.

14 August 1st your brother calls you, right?

15 A. When?

16 Q. August 1st.

17 A. I don't remember the exact date.

18 Q. Let me see if this will help you remember.

19 A. Okay.

20 Q. You talked to him on August 1st, correct?

21 A. I don't remember it being August 1st but I remember a
22 conversation like this, yeah.

23 Q. Okay.

24 And Samy had called you just as he would call you now
25 quite frequently, correct?

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T. El-Goarany - cross

1 A. Yeah. We spoke. Yeah, we spoke frequently.

2 Q. And this particular conversation was almost 40 minutes
3 long, right? A long conversation?

4 A. I don't remember how long it was but it was -- we had
5 lengthy conversations, yeah.

6 Q. And in this conversation he talked to you about life in
7 ISIS, correct?

8 A. We talked about -- yeah, the day-to-day activities, like in
9 ISIS frequently.

10 Q. And in this particular conversation he talked to you about
11 this girl that he liked, correct?

12 A. Yeah.

13 Q. He told you that this girl was texting him which was
14 unusual in ISIS territory, correct?

15 THE COURT: I'm sorry, did you say test or text?

16 MS. SHROFF: Text. T-E-X-T.

17 THE COURT: Thank you.

18 A. I don't remember that part of the conversation.

19 Q. You don't remember the part of the conversation where he
20 said he was very excited because he said they were going to
21 have a chance encounter on the street and she was going to look
22 at him to see if she liked him and what he looked like.

23 Do you recall that?

24 A. Yeah, I recall that.

25 Q. Right.

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T. El-Goarany - cross

1 And he mentioned that to you because he was very
2 excited about this happening, correct? He sounded happy about
3 it, right?

4 A. Yeah.

5 Q. And he in fact told you that he also applied for a marriage
6 application by then, correct?

7 A. Yeah, he did.

8 Q. He had gone through the interview for the marriage,
9 correct?

10 A. I don't -- I don't remember if he did at that time.

11 Q. Do you recall him telling you that the Islamic State had
12 approved of his application for marriage?

13 A. Yeah.

14 Q. And then he talked to you, did he not, that he was hoping
15 this chance encounter, this plan that they had would work and
16 she would like him, correct?

17 A. Yeah.

18 Q. Now, during this conversation you guys talked about other
19 things, right? Random stuff, right?

20 A. Like any conversation, yeah. We had different topics.

21 Q. You talked about the NBA finals, correct?

22 A. I don't remember. Maybe we did.

23 Q. I'm sorry?

24 A. I don't remember specifically talking about the NBA finals.

25 Q. Do you remember him telling you how he wanted to behead the

Hli5gam1

T. El-Goarany - cross

1 president of the United States in that conversation?

2 A. Yeah.

3 Q. You remember him telling you Hamas was a farce? Do you
4 remember him saying that?

5 MS. TEKEEI: Objection. Ground.

6 THE COURT: Overruled.

7 A. I don't remember that one specifically.

8 Q. Really?

9 A. Yes.

10 Q. Okay.

11 And after he talks to you about how he wants to behead
12 the president of the United States, he goes back to talking to
13 you about the girl who is texting him from the square, correct?
14 All in the same breath.

15 A. I don't remember the order of the conversation or what we
16 talked about when we talked about it.

17 Q. Well, let's move on and focus on the time frame when he
18 reaches out to you to tell you that he is actually married,
19 correct?

20 A. Yeah. Eventually he became -- he was married, yeah.

21 Q. October he is married. By October he is married, right?
22 October 5th to be precise.

23 A. I can't recall exactly. I know it was like a month or so.
24 I don't remember when exactly he got married. I don't remember
25 that date.

Hli5gam1

T. El-Goarany - cross

1 Q. He tells you he married a girl name Alaa, correct?

2 A. Yeah.

3 Q. Tells you she is 16 years old, correct?

4 A. Yeah.

5 Q. And tells you that they have a home together now, correct?

6 A. That's correct.

7 Q. Texts your mother; mom you are now a mother-in-law,
8 correct?

9 A. I don't remember that.

10 Q. And by now it is extremely clear to you, sir, is it not,
11 that Samy has established a happy life for himself in the
12 Islamic State, correct? At least that's what he is telling you
13 because you don't even know if this is still Samy or in this
14 case you are now convinced it is Samy.

15 A. I was speaking to him on the phone, so.

16 Q. No, no. This is a post that you sent.

17 A. Which post?

18 Q. When he posts to your mother you are now a mother-in-law
19 and you reply back to the post, that's a Facebook post?

20 A. I don't remember that Facebook post specifically but, yeah,
21 my mom knew about the marriage and -- yeah.

22 Q. And during this time you are Facebooking with him, right,
23 if that's a phrase?

24 A. Yes.

25 Q. And you are not concerned now whether or not this is Samy,

Hli5gam1

T. El-Goarany - cross

1 right, anymore?

2 A. No.

3 Q. Okay.

4 And you are also in touch with Alaa, correct? She
5 texts you and your parents occasionally?

6 A. Yeah.

7 Q. And time goes by and now we are talking after
8 Mr. El-Gammal's arrest your family is still in touch with Samy,
9 correct?

10 A. Yes.

11 Q. Samy sends a photo of himself that they showed you before,
12 Ms. Tekeei?

13 Could you put that photo up for me, please? 901?

14 While she is looking for that, do you remember that
15 photo that Ms. Tekeei showed you of your brother?

16 A. There was two photos, so.

17 Q. Right; well, you remember them both, right? How about that
18 one right there, do you remember that?

19 A. Yeah. I remember this photo, yeah.

20 Q. And you recall that your dad told him to stop posting
21 photos like this on Facebook because everything in the
22 El Goarany family was still telling others that he was doing an
23 internship in California, correct?

24 A. He didn't post this on Facebook.

25 Q. Did your dad tell him not to post photos on Facebook

Hli5gam1

T. El-Goarany - cross

1 because they were still telling the family that he was doing an
2 internship in California?

3 MS. TEKEEI: Objection, hearsay.

4 A. He didn't post this on Facebook.

5 Q. I know. That's your testimony. I'm asking you a follow-up
6 question, sir.

7 Did your father tell him -- him being Samy -- not to
8 post any photos on Facebook because the family was still
9 telling people that he was doing an internship in California?

10 MS. TEKEEI: Objection. 608. Hearsay.

11 THE COURT: Sustained.

12 BY MS. SHROFF:

13 Q. Did you tell people at this time when people were asking
14 you -- you can take that down, thank you -- what your brother
15 was up to? Were you telling people that he was doing an
16 internship in California?

17 MS. TEKEEI: During what time period?

18 THE COURT: Yes, occurring what time period.

19 MS. SHROFF: 2015.

20 MS. TEKEEI: When in 2015?

21 BY MS. SHROFF:

22 Q. Let me show you a chat that your father had about this
23 issue.

24 MS. TEKEEI: Can we get an exhibit number, Ms. Shroff?

25 MS. SHROFF: Here. I will do you one better.

Hli5gam1

T. El-Goarany - cross

1 MS. TEKEEI: Thank you so much.

2 BY MS. SHROFF:

3 Q. Is this one of the documents Ms. Tekeei reviewed with you
4 during your prep?

5 A. It's not my messages so we didn't review it. No.

6 Q. And does it refresh your recollection, Mr. El- Goarany,
7 that your father -- that your father -- tells Samy that he will
8 keep the statement for everyone that might ask about him and
9 that he should see it the same, which is that you are working
10 in California at a job and you got it through Chobo?

11 MS. TEKEEI: Objection. 608. Hearsay. Did not
12 refresh his recollection.

13 THE COURT: He hasn't answered as to whether or not it
14 refreshes his recollection.

15 Q. Does it refresh your recollection, sir?

16 A. No.

17 Q. It doesn't.

18 A. No. I have never seen this before, so.

19 Q. No, no, I know you haven't seen it before. You testified
20 to that. You did not see it during the prep. My question is
21 does this document refresh your recollection that that is in
22 fact what your father and mother were telling other people
23 during the time frame of June 2015?

24 MS. TEKEEI: Objection. Asked and answered.

25 THE COURT: Overruled.

Hli5gam1

T. El-Goarany - cross

1 A. No, it doesn't.

2 Q. What were you telling people in June 2015 about Samy's
3 whereabouts?

4 A. Either he was, you know, doing an internship in California
5 or, depending on the person, which was very, very few,
6 humanitarian work.

7 Q. And there came a point, right, in November, when you
8 learned and you were the one who learned that Samy had died,
9 correct?

10 A. Yes.

11 Q. And after he died his wife continued to reach out to you
12 and your family; is that correct?

13 A. That's correct.

14 Q. And your family, after he passed away, had a memorial
15 service for Samy, correct?

16 A. That's correct.

17 Q. And the memorial service was in the United States, correct?

18 A. Yes.

19 Q. And at the memorial service everyone at the memorial
20 service was told that Samy died in a car accident, correct?

21 A. Correct.

22 Q. Now, Mr. El- Goarany, there came a point, did there not,
23 when the prosecutors -- and by the prosecutors I mean the three
24 people sitting at this table here -- worked out an agreement
25 with you, right?

Hli5gam1

T. El-Goarany - cross

1 A. What do you mean? Like the non-pros agreement?

2 Q. What did you call it? I couldn't hear the word.

3 A. Non-prosecution agreement.

4 Q. A non-prosecution agreement?

5 A. Yes. That's what I said.

6 Q. And, they worked one out with you, right?

7 A. Yeah. Like I testified before, yeah.

8 Q. Non-prosecution; they're not going to prosecute you,
9 correct?

10 A. That is correct.

11 Q. And the deal was that you would testify for them, correct?

12 MS. TEKEEI: Objection.

13 THE COURT: I don't think the question was finished.

14 MS. SHROFF: That's okay.

15 Q. The deal was you would testify for them, correct?

16 A. Um --

17 Q. You know what, let me get you the agreement since
18 Ms. Tekeei put it into evidence. You have it right there
19 underneath the documents. I'm sorry.

20 A. That's all right.

21 Q. The deal was you would testify for them, correct?

22 A. Yeah. I have been subpoenaed to testified, yeah.

23 Q. And of course they told you that you had to testify
24 truthfully, correct?

25 A. Yes.

Hli5gam1

T. El-Goarany - cross

1 Q. And then they said -- and this was after you had met with
2 them, and I want to make sure I have this correctly, by then
3 you had met with them, just with Ms. Tekeei 11 times, with the
4 FBI you had met with on February 6th -- let me just count it
5 up -- one, two, three, four, five, six, seven, eight, nine,
6 ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
7 seventeen, eighteen, nineteen, twenty -- twenty times just with
8 the FBI, correct?

9 MS. TEKEEI: Objection.

10 THE COURT: Overruled.

11 A. I don't remember how many times we met. It was a lot.

12 Q. Fair enough.

13 But by then everybody knew what you were going to say,
14 right? They had gone through this with what they wanted to
15 hear with you, correct, during the preps?

16 A. No.

17 Q. No?

18 A. We prepared and to recall the events that had happened but
19 it wasn't a rehearsal, it was just a preparation.

20 Q. It wasn't a rehearsal?

21 A. No. I wasn't -- I'm not rehearsing my answers.

22 Q. No, no. I'm not saying you are rehearsing your answers.
23 I'm saying when you met with them you did a question and answer
24 colloquy with them, right?

25 A. Yeah, we prepared questioning. Yeah.

Hli5gam1

T. El-Goarany - cross

1 Q. That's a rehearsal, right? You prepared exactly what you
2 are doing here, you sat down and prepared with them, right?

3 It's okay.

4 A. Yeah, we prepared, yeah.

5 Q. There you go.

6 And, the deal they worked out with you was that they
7 would not charge you, correct, with any federal crime, right?

8 MS. TEKEEI: Objection.

9 THE COURT: Overruled.

10 A. Yeah, with pertaining to this case. Yeah.

11 Q. Well, you haven't committed any other federal crimes,
12 right?

13 A. No. Not that I'm aware of.

14 Q. So, they would not charge you with the federal crimes you
15 committed in this case, correct? That's the deal I'm talking
16 about. That's all I'm talking about.

17 A. That is correct.

18 Q. And they also promised you that they would not prosecute
19 you for those crimes, correct? I mean, they're not going to
20 charge you, they're not going to prosecute you; right?

21 A. Right. Right.

22 Q. And when they came up with this deal for you, right, you
23 really didn't have much of a choice, isn't that true? It is a
24 good deal for you, it is a great deal.

25 A. It's a --

Hli5gam1

T. El-Goarany - cross

1 Q. How could the deal get any better?

2 A. Yeah. I mean it's -- it's -- yeah, it's an agreement, it
3 is a deal. Yeah, sure.

4 Q. It is a really good deal, right? You walk away scot-free?

5 MS. TEKEEI: Objection.

6 THE COURT: Sustained.

7 Q. Now, you committed some very serious federal crimes, right?

8 A. Yes.

9 Q. Ms. Tekeei told you that in fact, correct?

10 A. Yes.

11 Q. And she told you that you aided and abetted Samy in his
12 quest to provide material support to a foreign terrorist
13 organization, correct?

14 A. Yeah. I helped him, yeah.

15 Q. And that, in itself, carries 20 years in prison, correct?

16 MS. TEKEEI: Objection.

17 THE COURT: Overruled.

18 A. I don't know how long.

19 Q. You don't know how long?

20 A. Yes.

21 Q. You were facing exactly these charges, correct?

22 MS. TEKEEI: Objection.

23 THE COURT: Overruled.

24 A. I'm -- yeah. I'm facing charges that are outlined in the
25 document, yes.

Hli5gam1

T. El-Goarany - cross

1 Q. And you don't know how much time that charges carries, of
2 the very charge that you could have to face?

3 A. I don't know.

4 Q. Okay.

5 Now, you also committed the crime of aiding and
6 abetting Samy in his desire to become a combatant for the
7 Islamic State you testified, correct?

8 A. Yes.

9 Q. And you know that that crime carries a mandatory sentence
10 of 10 years or a fine, correct?

11 A. I don't know the exact years of --

12 Q. Ms. Tekeei didn't go over all the years you faced with you
13 when she signed that contract with you?

14 A. I don't recall. I don't recall.

15 Q. Okay. And you face up to five years for smashing the
16 computer or Samy smashing the computer and you helping him
17 smash it, correct? That's another five, correct?

18 A. I don't know.

19 Q. And you face another eight years, do you know,
20 Mr. El- Goarany, for lying to the FBI about a terrorism act,
21 correct?

22 A. Yes. I committed all these crimes. Yes.

23 Q. Even if you were to just hypothetically add up all these
24 numbers it would be scary for you, correct?

25 A. Yeah.

H1i5gam1

T. El-Goarany - cross

1 Q. And these three prosecutors basically gave you -- not
2 basically, gave you a no-charge card, right?

3 MS. TEKEEI: Objection.

4 THE COURT: If you understand it.

5 THE WITNESS: I don't.

6 BY MS. SHROFF:

7 Q. They're not going to charge you, correct?

8 MS. TEKEEI: Objection.

9 THE COURT: Overruled.

10 Q. For not one of these crimes are you ever going to get
11 charged, correct?

12 MS. TEKEEI: Objection.

13 THE COURT: Overruled.

14 A. No. I don't believe.

15 Q. What?

16 A. I will not get charged. That's it.

17 (Continued on next page)

H1IFGAM2

T. El-Goarany - cross

1 Q. Now, you testified on direct that you did all of this
2 because you loved your brother, Samy, correct?

3 A. Yes.

4 Q. And you testified that you helped him join this one
5 organization, the organization whose primary goal is to kill
6 all of us. You helped him join that because you wanted to keep
7 the lines of communication open with Samy, correct?

8 A. I did it for a lot of reasons, and continually speaking to
9 him, to Samy, was one of those reasons.

10 Q. And the reasons were all personal, having to do only with
11 you and your brother, correct?

12 A. That's incorrect.

13 Q. Really?

14 A. Yes.

15 Q. Did they have to do with the larger good? Was it good for
16 society for you to have helped him? No, right?

17 A. I don't know.

18 Q. You don't know. You don't know if it was good for society
19 to help your brother join the Islamic State, is that your
20 testimony here today?

21 A. No, it wasn't.

22 Q. Now, you also testified on direct, sir, did you not, that
23 Mr. Gammal was somebody you had a conversation with with Samy
24 El-Goarany, correct?

25 MS. TEKEEI: Objection.

H1IFGAM2

T. El-Goarany - cross

1 THE COURT: Overruled.

2 A. Can you rephrase the question? I'm sorry.

3 Q. Do you remember Ms. Tekeei asking you about how Mr. El
4 Gammal helped Samy, correct? She asked you that precise
5 question?

6 A. Yes.

7 Q. And you said in the vaguest and the most general of those
8 terms is how he answered, correct?

9 A. Yeah, he wasn't specific.

10 Q. Samy never told you Mr. El Gammal recruited you, correct,
11 him, correct?

12 A. No, he did not.

13 Q. Samy never told you Mr. El Gammal ever motivated him,
14 correct?

15 A. Samy never told me that.

16 Q. Samy never told you that Mr. El Gammal had a direct contact
17 with ISIS, correct?

18 A. He did not.

19 Q. In fact, Samy said that nobody showed him the way to get
20 there, nobody helped him along the way to get there, isn't that
21 true?

22 A. No, he didn't say that.

23 Q. All right, well, let me show you what --

24 MS. SHROFF: Your Honor, at this time may we play a
25 short video for Mr. El-Goarany?

H1IFGAM2

T. El-Goarany - cross

1 THE COURT: Mr. Quigley? I'm sorry.

2 MS. TEKEEI: Your Honor, as that video is not yet in
3 evidence, we intend to put it into evidence later, if we could
4 turn the sound down so the jury doesn't hear it.

5 THE COURT: That was my concern, the sound. I don't
6 know if we can play it at a level where Mr. El-Goarany can hear
7 it and not the jury.

8 MS. SHROFF: I suppose we could mute the sound.

9 THE COURT: Mute the sound -- well, however you want
10 to go about it.

11 MS. SHROFF: Or we could take a break and he can watch
12 it during the break.

13 THE COURT: I was going to suggest that we take the
14 jury out just for that purpose. So why don't we take ten
15 minutes.

16 (Jury excused)

17 (Continued on next page)

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H1IFGAM2

T. El-Goarany - cross

1 (In open court; jury not present)

2 THE COURT: Okay, be seated.

3 (Video shown)

4 MS. SHROFF: Thank you, your Honor.

5 THE COURT: We have a few minutes, I told the jury, so
6 should we bring them back now?

7 MS. SHROFF: Up to you.

8 THE COURT: See if they're ready.

9 (Continued on next page)

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H1IFGAM2

T. El-Goarany - cross

1 (In open court; jury present)

2 THE COURT: Everyone please be seated. Ms. Shroff.

3 BY MS. SHROFF:

4 Q. Mr. El-Goarany, does that refresh your recollection that on
5 that video that Samy said nobody showed me the way to get here
6 and nobody helped me along the way to get here, including Ahmed
7 El Gammal.

8 MS. TEKEEI: Objection.

9 THE COURT: Overruled. Does it refresh your
10 recollection?

11 A. No. That was the first time I saw the video.

12 Q. Let me just go back to one last thing, Mr. El-Goarany. Can
13 you pull up his non-pros agreement? Mr. El-Goarany, your
14 obligation is to tell the truth under this agreement, that's
15 what you testified on direct, right?

16 A. Yes.

17 Q. Who decides whether you're telling the truth or not?

18 A. The jury.

19 Q. Really? The jury decides or Ms. Tekeei decides?

20 A. Sorry. Under this agreement, yeah. Sorry. Sorry, under
21 this agreement to my understanding the government decides, yes.

22 Q. The government, meaning Brendan Quigley, Negar Tekeei,
23 Mr. Andrew DeFilippis and Komaal Collie they, they are the
24 government here, is that correct?

25 A. I believe so.

H1IFGAM2

T El-Goarany - redirect

1 Q. And they decide whether you are telling the truth?

2 A. Yes.

3 Q. And you are testifying for the government here today,
4 correct?

5 A. That is correct.

6 Q. Let me just see the signature page there of this contract
7 of yours. Could you just zoom in to make sure it's clear? The
8 jury is not a party to this contract, correct?

9 A. Yes. I'm sorry.

10 Q. And Judge Ramos isn't a party to this contract, correct?

11 A. No. I'm sorry.

12 Q. No, no. Just to be clear. He doesn't have anything to do
13 with whether you're telling the truth, correct?

14 A. No.

15 MS. SHROFF: I have nothing further.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MS. TEKEEI:

19 Q. Mr. El-Goarany, you were asked on cross-examination about
20 whether you were charged for your lies to the FBI. Do you
21 recall that?

22 A. Yes.

23 Q. You were also asked whether you were charged for your
24 conduct in accompanying your brother along and helping him, is
25 that correct?

H1IFGAM2

T El-Goarany - redirect

1 A. Yes.

2 Q. And you were asked about meetings that you had with the
3 government in preparation for your testimony. Do you recall
4 those questions?

5 A. I do.

6 Q. And Ms. Shroff asked you about the non-prosecution
7 agreement, we just saw it here. She used the word "deal." Do
8 you recall her using that word?

9 A. Yeah, I do.

10 Q. When you were provided with this agreement did you make any
11 changes to it?

12 A. No.

13 Q. Did you negotiate it in any way?

14 A. I did not.

15 Q. What is your only job, the only thing that you must do as a
16 witness?

17 A. Tell the truth.

18 Q. What do you understand would happen to you if you lie
19 during your testimony?

20 A. I'll be prosecuted for perjury, for lying, and for the rest
21 of the crimes I committed.

22 Q. What happens if you violate the terms of that agreement
23 that Ms. Shroff put up?

24 A. The government will prosecute me for lying and for the
25 crimes committed.

H1IFGAM2

T El-Goarany - redirect

1 Q. And the government, meaning the prosecution team sitting
2 here, is that correct?

3 A. That's correct.

4 Q. Ms. Shroff asked you some questions about your brother's
5 laptop. Other than accompanying your brother in the car where
6 he drove to the Dumpster and threw the hard drive into the
7 Dumpster, did you do anything else to help with him in that
8 process?

9 A. I did not.

10 Q. You were asked some questions about your brother's views on
11 ISIS. Just to be abundantly clear, approximately when did he
12 first tell you he wanted to join ISIS?

13 A. It was September, 2014.

14 Q. You also testified about how your mother confronted Samy
15 when she learned about his travel. Do you recall that
16 testimony?

17 A. Yes.

18 Q. And you testified about the story that Samy told your
19 mother when she confronted him. Do you recall that?

20 A. Yes.

21 Q. What understanding did you have about whether he told her
22 the truth?

23 A. I understood that he did not tell the truth.

24 Q. Leading up to your brother's departure for ISIS, did he
25 tell you the exact day that he planned to leave for ISIS?

H1IFGAM2

T El-Goarany - redirect

1 A. No, he did not.

2 Q. Why?

3 A. I asked him not to.

4 Q. Why?

5 A. I didn't know -- I didn't want to know when he was leaving
6 because it was, it was too hard for me to know.

7 Q. You testified about how you drove your brother to the train
8 station a few days before he left New York. Do you recall
9 that?

10 A. Yeah.

11 Q. When you dropped him off at the train station you described
12 his demeanor. Do you recall that?

13 A. Yes.

14 Q. Did you suspect that he would be leaving for ISIS soon?

15 A. Yeah. I had a feeling. Yeah.

16 Q. And just to be clear, what day did you return to your
17 Queens apartment after dropping your brother off at the train
18 station?

19 A. January 20, when the semester started.

20 Q. You were asked a few questions about your discussions with
21 the FBI in early 2015. In particular, during the first
22 interview when you told the FBI that your brother might have
23 joined a local militia in Syria, do you recall that? Do you
24 recall getting asked questions about that?

25 A. Yeah.

H1IFGAM2

T. El-Goarany - recross

1 Q. At that time, did you in fact know that your brother had
2 already joined ISIS?

3 A. Yes.

4 Q. Ms. Shroff asked you some questions about how frequently
5 you spoke to your brother. Were there periods of time when you
6 didn't hear from him at all when he was in ISIS?

7 A. Yes.

8 Q. For example, when he was deployed in battle?

9 A. Correct.

10 MS. TEKEEI: Nothing further, your Honor.

11 MS. SHROFF: May I, your Honor?

12 THE COURT: Yes.

13 RECROSS EXAMINATION

14 BY MS. SHROFF:

15 Q. Just to be clear, she decides if you're telling the truth
16 or not, correct?

17 MS. TEKEEI: Objection.

18 THE COURT: Overruled.

19 A. Yes.

20 Q. Okay. Now, you testified, did you not, on redirect here
21 that you were present when Samy lied to your mother, correct?

22 A. I was.

23 Q. Right. And Samy and your mother had a long conversation
24 about how he wanted to do humanitarian work, correct?

25 A. Correct.

H1IFGAM2

T. El-Goarany - recross

1 Q. And Samy in fact had a ticket at that time, a ticket that
2 he did not use, correct?

3 A. Correct.

4 Q. And in fact, you and your mother believed, did you not,
5 that Samy had actually changed his mind about going, correct?

6 A. Correct.

7 Q. And in fact, when Ms. Tekeei asked you that question, she
8 did not ask you right now about that change of heart that he
9 had, correct?

10 I'll withdraw that.

11 MS. SHROFF: I have nothing further.

12 MS. TEKEEI: Nothing further, your Honor.

13 THE COURT: Mr. El-Goarany, you may step down.

14 (Witness excused)

15 THE COURT: Will the government please call its next
16 witness?

17 MS. TEKEEI: Thank you, the government calls Serpil
18 Kahveci-Ceceli.

19 THE COURT: Please watch your step. Please step up
20 into the witness stand and please remain standing.

21 SERPIL KAHVECI-CECELI,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 THE COURT: Please be seated, pull your chair up to
25 the microphone and please begin by stating your full name and

H1IFGAM2

Kahveci-Ceceli - direct

1 spelling your last name for the record.

2 THE WITNESS: S-e-r-p-i-l, last name K-a-h-v-e-c-i,
3 dash, C-e-c-e-l-i.

4 THE COURT: Thank you so much. Ms. Tekeei.

5 MS. TEKEEI: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MS. TEKEEI:

8 Q. Where do you work?

9 A. I work at Turkish Airlines at JFK Airport.

10 Q. How long have you worked at Turkish Airlines?

11 A. The past three years.

12 Q. What did you do before you were an employee at Turkish
13 Airlines?

14 A. I was working at the airport for a new company still with
15 Turkish Airlines.

16 Q. What are your current day-to-day responsibilities for
17 Turkish Airlines?

18 A. Responding to customer complaints, researching them and
19 writing, referring back to the passengers.

20 Q. What's your official title?

21 A. Customer service representative.

22 Q. You mentioned that you work at JFK. Where is Turkish
23 Airlines located?

24 A. It's in Terminal 1 at JFK Airport.

25 Q. In the course of your work at Turkish Airlines have you

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1 become familiar with the manner and method in which Turkish
2 Airlines maintains its records?

3 A. Yes.

4 Q. What types of records do you deal with on a day-to-day
5 basis?

6 A. Passenger reservations, ticket details, check-in details,
7 flight details.

8 MS. TEKEEI: Your Honor, may I approach?

9 THE COURT: You may.

10 Q. Okay. I have handed you what's been marked for
11 identification as Government Exhibits 801, 802, 803, 804, 805
12 and 806. Could you take a moment to look through those?

13 MS. SHROFF: Your Honor, the defense has no objection
14 to any of those coming into evidence.

15 THE COURT: Okay, they may be received.

16 (Government's Exhibits 801 through 806 received in
17 evidence)

18 MS. TEKEEI: Thank you, your Honor. Go ahead and take
19 a moment to look through those.

20 (Pause)

21 Q. Generally speaking, what are those records?

22 A. These are reservation and ticket details belonging to
23 passengers listed on the ticket.

24 Q. Thank you.

25 MS. TEKEEI: Since they are in evidence, your Honor,

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1 may we publish 802?

2 THE COURT: You may.

3 MS. TEKEEI: Thank you.

4 Q. Looking at Government Exhibit 802, and you can either look
5 at it on the screen or in the hard copy in front of you,
6 describe for the jury what is shown in 802?

7 A. This is a reservation detail for a passenger Samy
8 El-Goarany. It was created on October 22 of 2014. Ticket was
9 issued. Payment was done in cash and I see the booking dates,
10 the flight dates for the passenger.

11 Q. What are those dates?

12 A. The departure date is listed as November 6 of 2014,
13 departing at 1:15 arriving to Istanbul at 5:45 a.m. the
14 following day. The return date was listed as November 17, 2014
15 from Istanbul at 1:25 p.m. arriving here to New York at
16 5:45 p.m.

17 Q. Thank you. Can you tell looking at these records where
18 this ticket was purchased?

19 A. I can tell you that the reservation was created at the
20 airport.

21 Q. And is that because you're looking at the created line?

22 A. Correct. The second line where it says JFK.

23 Q. What time was the reservation created?

24 A. It is showing as 18:15 Zulu.

25 Q. What is 18:15 Zulu?

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1 A. It is mean time, Greenwich time.

2 Q. Is that the same thing as UTC time?

3 A. Yes.

4 Q. How can you tell that the passenger paid for this in cash?

5 A. Looking at the payment line it indicates it's cash payment,
6 the amount is showing as USD 875.60. Payment line with M shows
7 that the payment is in cash.

8 Q. Okay, thank you. Setting that to the side. Looking at
9 Government Exhibit 803.

10 MS. TEKEEI: Your Honor, may we publish that to the
11 jury?

12 THE COURT: You may.

13 Q. What do you see in this record?

14 A. This is a new reservation created for the same passenger.
15 It was created on October 29 of 2014 with a new reservation
16 confirmation. It was done at JFK with a sales staff, code AR.
17 It was issued in exchange of a previous ticket he purchased and
18 it was, we could see once again that the payment, original
19 ticket was paid in cash. He did make an additional payment to
20 change the ticket, an additional \$272 and the new ticket number
21 was generated again, where it says ticket on October 29th.

22 Q. And how do you know that this reservation was made at the
23 airport?

24 A. Again, looking at the "created" line, we see the three
25 letter code for the airport, JFK.

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1 Q. And how do you -- earlier you said it was the same
2 passenger. Who is that passenger?

3 A. Samy El-Goarany.

4 Q. Looking at the bottom of the first page, where it says:
5 "Remarks," two lines from the bottom, where it says, "Booking
6 canceled as per passenger request." Do you see that?

7 A. By looking at the remarks, I can tell that this passenger
8 requested to change this ticket once again after making changes
9 to the ticket. This booking was canceled based on the
10 passenger request on November 17, 2015.

11 Q. What was the method of that cancellation?

12 A. It was by the passenger at the airport.

13 Q. How can you tell that?

14 A. Because looking at the agent sign-in code towards the end,
15 right before the date, where it says JFK FASU, JFK is the
16 three-letter code, once again, for JFK airport, FA is the agent
17 who canceled the booking and entered the remarks on passenger's
18 reservation.

19 Q. So this record like the previous one we showed, 802, were
20 generated after the passenger came to the airport in person to
21 either purchase a ticket or make a reservation, is that
22 correct?

23 A. Yes.

24 Q. And what are the initial dates of travel that are reflected
25 in Government Exhibit 803?

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1 A. November 24, 2014 and December 4, 2015 as a return flight.

2 Q. And just to be totally clear, where it says the created
3 line on page 1, it says October 29. Do you see that?

4 A. Yes.

5 Q. Can you -- what does that indicate?

6 A. The reservation was booked on October 29, 2014.

7 Q. At what time?

8 A. 22:02 Zulu time again, Greenwich time.

9 Q. I think you said the passenger then later changed the
10 reservation again and canceled it on November 17, is that
11 right?

12 A. Yes.

13 Q. All right. Turning your attention to Government Exhibit
14 804. What does this exhibit reflect?

15 A. This is a new reservation for the same passenger, Samy M.
16 El-Goarany. It was created on November 22 of 2014 at 01:51
17 Zulu time. New booking reference was given. Once again, it
18 was issued in exchange for the previous ticket he made changes
19 on. Once again the payment was, the changes were done at JFK
20 Airport. You could tell by looking at the created line. Once
21 again, the payment was done in cash.

22 Q. And what are the dates of travel reflected here?

23 A. The new travel dates are listed at January 27, 2015, return
24 date at February 3, 2015.

25 Q. And was this the final flight that was booked for this

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1 passenger?

2 A. This was the final flight booked for this passenger.

3 However, looking at the remarks there was a flight

4 cancellation -- just want to take a quick look at that, please?

5 Q. Yes, of course.

6 A. Sorry. Okay. The flight that he was supposed to depart on
7 January 27, 2015 at 1:15 was canceled.

8 Q. Does it say why? Do you know why?

9 A. It doesn't reflect why it's canceled. The passenger's PNR,
10 but the booking was canceled.

11 Q. Was the passenger scheduled for another flight?

12 A. Yes, he was scheduled to leave same day at a later flight
13 in the evening.

14 Q. And what flight was that?

15 A. Flight number 12 at 11:40, 23:40.

16 Q. Is that local time?

17 A. Local time.

18 Q. Showing you now Government Exhibit 805. What does this
19 reflect?

20 A. This is the check-in history for the passenger's flight.

21 On TK12 January 27, 2015. Can I just go over it?

22 Q. Yes, of course.

23 A. Passenger's name, which is listed as Pax, El-Goarany, Samy.

24 PNR is a reservation record for, the final reservation record

25 for this passenger. Status; the five displays show us that the

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1 passenger did actually travel on this flight. There was no off
2 load. He was not a no-show. He was boarded on the flight.
3 Seat number 49 alpha was given. Gender shown as M, which is
4 mail. Destination is Istanbul. It shows class as Y, referring
5 to economy class. He checked in one bag at 23 kilos. He did
6 not have any, he was not coming from a domestic flight or he
7 was not going out on an outbound flight, meaning from Istanbul
8 on. He had no connections. His E-ticket number it is listed
9 there which he purchased. And looking at the bottom, the last
10 line, we could tell that he was boarding on this flight.

11 Q. Thank you. So turning your attention now to Government
12 Exhibit 801. What is this document?

13 A. This is the passenger manifest for TK12 on January 28.
14 It's showing as January 28th because of once again the
15 Greenwich time. But this is a passenger manifest, the actual
16 passenger manifest for TK12 on January 27.

17 Q. And directing your attention approximately halfway down
18 this page, looking at the passenger in the seat 49A?

19 A. Yes.

20 Q. Who is that passenger?

21 A. Just want to find his name.

22 Q. A little below the middle of the page.

23 A. I can't see it there, but I can see it on my doc here.

24 Q. That's all right if you see it on your copy?

25 A. We can see that passenger 49 alpha, once again, Samy

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1 El-Goarany was on that flight. This is the final list of
2 passengers who were boarded on that flight, TK12 on January 27.

3 Q. Thank you. Now, turning your attention to Government
4 Exhibit 806. What is this record?

5 A. This is a flight detail information for flight TK4 on
6 January 27 which is showing us canceled due to weather.

7 Q. Okay. Setting that to the side, you discussed earlier the
8 return flight that the passenger Samy El-Goarany had booked on
9 the last part of the, the last time that he scheduled his
10 flight. Do you recall that?

11 A. Yes.

12 Q. Did you have an opportunity to review records for that
13 return flight?

14 A. Yes.

15 Q. Was he on the return flight?

16 A. He was not. His return ticket was still shown as open. He
17 was not listed on the passenger manifest for that return flight
18 and he was on the no-show list for that flight.

19 Q. Thank you.

20 MS. TEEKEI: No further questions, your Honor.

21 THE COURT: Any cross?

22 MS. SHROFF: Just one question.

23 CROSS-EXAMINATION

24 BY MS. SHROFF:

25 Q. Good afternoon.

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1 A. Good afternoon.

2 Q. Actually, it's still morning. I'm sorry. 49A?

3 A. Yes.

4 Q. Window seat?

5 A. Window seat.

6 MS. SHROFF: Thank you very much. Nothing further.

7 MS. TEKEEI: Nothing further, your Honor.

8 THE COURT: You may step down.

9 (Witness excused)

10 THE COURT: Will the government please call its next
11 witness?

12 MR. QUIGLEY: Yes, your Honor. The government calls
13 Timothy McNulty.

14 THE COURT: Sir, please step forward and remain
15 standing when you get into the witness stand.

16 THE WITNESS: Yes, sir.

17 TIMOTHY McNULTY,

18 called as a witness by the Government,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. QUIGLEY:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. Where do you work?

25 A. I'm a special agent with the Federal Bureau of

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McNulty - direct

1 Investigation, New York office, counterterrorism division.

2 Q. How long have you been with the FBI?

3 A. Eleven years.

4 Q. What did you do before you became an FBI agent?

5 A. I was a police officer.

6 Q. Where was that?

7 MS. MIRON: Your Honor, I can't hear the witness.

8 THE COURT: Sorry. Mr. McNulty, could you bring the
9 microphone closer and get right up on top of it, if you don't
10 mind.

11 Q. Where was that?

12 A. Village of Hanover Park, a suburb of northwest Chicago.

13 Q. What did you do before you became a police officer?

14 A. I was a commissioned officer of the United States Marine
15 Corps.

16 Q. When did you become involved in this investigation?

17 A. Spring of 2016.

18 Q. And in the course of your work in this investigation, did
19 you review certain materials the government obtained from
20 Facebook?

21 A. Yes, I did.

22 Q. I'm handing you what's been marked for identification as
23 Government Exhibit 113A. And I'm also handing you a copy of
24 what's in evidence as Government Exhibit 113AT. So directing
25 your attention first to 113A. Do you recognize that?

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1 A. Yes, I do.

2 Q. And what is it?

3 A. It's a Facebook Messenger conversation between Samy Mohamed
4 and Attiya Aboualala.

5 MR. QUIGLEY: Your Honor, the government offers
6 Government Exhibit 113A in evidence.

7 MS. MIRON: Subject to previous objection, your Honor.

8 THE COURT: Very well. That exhibit will be received.

9 (Government's Exhibit 113A received in evidence)

10 MR. QUIGLEY: Could we publish what's in evidence as
11 Government Exhibit 113AT and the jury can if they want turn in
12 their binders to Government Exhibit 113AT?

13 Q. So we can go to the bottom of page 6.

14 A. On 113AT?

15 Q. Yes. And read the entries on May 7, 2015 and July 21, 2015
16 and I will read the part of Samy El-Goarany, if you can read
17 the part of Attiya.

18 A. Okay.

19 "ATTIYA: There are two missed calls.

20 MS. MIRON: Objection.

21 THE COURT: Overruled.

22 "ATTIYA: When should we meet?

23 "S. EL-GOARANY: Forgive me brother, internet is bad
24 here. God willing I still need to complete training. I can
25 meet you after I finish with the camp.

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McNulty - direct

1 "ATTIYA: God willing.

2 MR. QUIGLEY: July 21, 2015.

3 "S. EL-GOARANY: Eid Mubarek, my friend. May God
4 accept from us and from you.

5 "ATTIYA: Amen my God.

6 MR. QUIGLEY: Let's go ahead to the entries beginning
7 on September 5, 2015 and we'll read until page 14 when we get
8 to the entries on September 6 of 2015. And, again, I'll read
9 the part of Samy El-Goarany if you could read the part of
10 Attiya.

11 THE WITNESS: Okay.

12 "ATTIYA: Samy. You cause a big problem for Ahmed.

13 "S. EL-GOARANY: How?

14 "ATTIYA: It is now in prison.

15 "S. EL-GOARANY: Glory be to Allah I knew nothing I
16 have not spoken to him in over a month. Also, there is nothing
17 dangerous, okay?

18 "ATTIYA: Possible. Do you know where is he?

19 MR. QUIGLEY: I think you skipped a line there.

20 MS. MIRON: Objection, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: Oh, I'm sorry.

23 "ATTIYA: Can you help him?

24 "S. EL-GOARANY: Possible. Do you know where is he?
25 Did you speak with him recently?

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1 "ATTIYA: I spoke with his friend knew.

2 "S. EL-GOARANY: Is he in jail in America?

3 "ATTIYA: Yeah. How can we help him? Can you help
4 him?

5 "S. EL-GOARANY: I do not know. I need to learn the
6 details of his imprisonment. I need to know where he is and
7 what the charges are against him and I need to know when this
8 happened, what the reason is.

9 "ATTIYA: Accused of facilitating the arrival to the
10 State.

11 "S. EL-GOARANY: And when did he get imprisoned?

12 "ATTIYA: I do not know.

13 "S. EL-GOARANY: I'm very limited in my contacts here,
14 brother. I do not know anything about Ahmed's situation. All
15 I know is what you tell me. God willing I will pray for him.
16 But I don't know how I can help him in any other way.

17 "ATTIYA: Dad spoke with how you can help.

18 "S. EL-GOARANY: What did my father say?

19 "ATTIYA: Could provide any help. You are the cause
20 of the problem.

21 "S. EL-GOARANY: Are you certain that I am the cause?

22 "ATTIYA: Yeah.

23 "S. EL-GOARANY: I cannot do anything for him here.

24 "ATTIYA: You can connect your father.

25 "S. EL-GOARANY: And did he not know why they did not

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McNulty - direct

1 arrest him earlier, if I really am the cause. I do not know
2 why they chose to do it now. And what can my father do? I do
3 not think it is safe to involve my family in this.

4 "ATTIYA: I do not know. Ask him.

5 "S. EL-GOARANY: How are you certain that I am the
6 cause? What is your proof?

7 "ATTIYA: A friend told me.

8 "S. EL-GOARANY: Glory be to Allah. That is strange.
9 They had a lot of time to do this to him. I don't know why
10 they chose now.

11 "ATTIYA: This is not the important thing now is we
12 need to help him. Do you contacted your father? I am talking
13 with your father now.

14 "S. EL-GOARANY: What is my father saying to you? I
15 do not want to contact my father about this.

16 U.S. ATTORNEY: Must relate to him and ask him for
17 help.

18 "S. EL-GOARANY: I do not know how my father can
19 possibly help him, except with money maybe but I do not see how
20 he can help Ahmed be freed.

21 "ATTIYA: Ask him.

22 "S. EL-GOARANY: I mean, if my father gets involved,
23 he could be in danger too because I am no longer in America.

24 "ATTIYA: Ahmed has a problem because of you and you
25 have to help him.

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McNulty - direct

1 "S. EL-GOARANY: I don't want my father to go to jail
2 too, okay? How do you suppose my father helps him? By
3 speaking to the same authorities who jailed him?

4 "ATTIYA: Can we meet?

5 "S. EL-GOARANY: I will talk to my father, God
6 willing, but do not think he can do anything for Ahmed except
7 send him money. We can meet if you come to the State.

8 "ATTIYA: I want to meet you in Istanbul.

9 "S. EL-GOARANY: I cannot come back to Istanbul. It
10 is too dangerous. It is easier for you to come here.

11 "ATTIYA: Can a city near you.

12 "S. EL-GOARANY: No, brother, even that is unsafe.

13 "ATTIYA: Hallelujah, great.

14 "S. EL-GOARANY: I did not make hijrah to go back to
15 Dar al Kufir. This is a permanent move. I can talk to you no
16 problem, but to go back to Turkey is not good.

17 THE WITNESS: Attiya appears to post a couple of phone
18 numbers.

19 "S. EL-GOARANY: Okay, but I don't have a mobile now.
20 I will asked you when I get my phone back, God willing. Maybe
21 in three weeks.

22 THE WITNESS: There's an attachment sticker posted by
23 Attiya.

24 "S. EL-GOARANY: I am sorry for Ahmed, really, but be
25 patient brother, God willing, Allah will protect him from the

H1IFGAM2

McNulty - direct

1 tyrants in America.

2 "ATTIYA: Ahmed was taken into custody by the FBI 15
3 days ago. We still don't know the reason and whatever the
4 reason is can you please help us to find any of his friends in
5 the U.S.A. so that we can contact them. His mother is there
6 and she doesn't know any of Ahmad's friends as his cell phone
7 and laptop have been taken away by the FBI. Please try to help
8 us. His mother is in a very bad condition. She doesn't know
9 English and unable to do anything.

10 "S. EL-GOARANY: Do you have his mother's number? If
11 you do, I will give it to my father God willing he can help
12 her.

13 "ATTIYA: Look for it.

14 "S. EL-GOARANY: What is her name? Does she have
15 Facebook?

16 "ATTIYA: No.

17 "S. EL-GOARANY: Give me the name of someone he is
18 related to, then, someone who is on Facebook who may have his
19 mother's number?

20 "ATTIYA: No.

21 BY MR. QUIGLEY:

22 Q. Can we stop there for a second? So, Agent McNulty, after
23 this message at 20:21:13 on September 5, 2015 what's the date
24 and time of the next message between Samy El-Goarany and Attiya
25 Aboualala?

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McNulty - direct

1 A. It's the next day 9/6/2015 at 8:13:52.

2 Q. Let's go there. Do you see a link there, a link to an
3 ABC.com news article?

4 A. Yes.

5 Q. Were you able to find an ABC15.com news article discussing
6 the defendant's arrest?

7 A. Yes.

8 Q. Did it mention Samy El-Goarany or Attiya by name in this
9 article?

10 MS. MIRON: Objection, hearsay.

11 THE COURT: Sustained.

12 Before we go on, we should take our morning break.
13 Fifteen minutes, ladies and gentlemen. Don't discuss the case,
14 don't do any research, don't read any news accounts of the case
15 if you should come across one. Fifteen minutes.

16 (Jury excused)

17 (Continued on next page)

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McNulty - direct

1 (In open court; jury not present)

2 MS. SHROFF: Your Honor, we still have some exhibits
3 that we don't know if Mr. Quigley is going to object or not.
4 But we can do that after lunch before the redirect. I'm
5 reminding the parties.

6 THE COURT: I think one came in, though.

7 MS. SHROFF: We're waiting on the other.

8 MR. QUIGLEY: One we're not going to object to. We
9 object to one but not the other.

10 MR. HABIB: Which one do you not object to?

11 MR. QUIGLEY: I think it's BB.

12 MS. SHROFF: Your Honor, the second matter is the
13 government has informed us that they do not intend to put into
14 evidence in their case in chief Mr. Ahmed El Gammal's
15 post-arrest statement.

16 THE COURT: All right.

17 MS. SHROFF: I just wanted to let the Court know that.

18 THE COURT: Is that right?

19 MR. QUIGLEY: Yes.

20 MS. SHROFF: We will try to now adjust our witnesses,
21 because I think they're case is going to be shorter and we're
22 working on it.

23 THE COURT: Very well. Thank you. Since there's
24 nothing more, twenty after the hour. Don't be late.

25 (Continued next page)

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McNulty - direct

1 THE COURT: Are we all ready?

2 MS. TEKEEI: Your Honor, we are just trying to
3 schedule our witness lineup. Approximately what time do you
4 plan on taking a lunch break today?

5 THE COURT: 12:30. I have a 12:30 criminal matter.

6 MS. TEKEEI: Thank you, your Honor.

7 THE COURT: Can we get the jury?

8 MS. MIRÓN: Your Honor, there was a lot of record in
9 the recent Facebook exchanges regarding Mr. El-Gammal's
10 imprisonment. We would like that the jury be instructed that
11 they are to draw no inference related to guilt.

12 (Continued on next page)

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McNulty - direct

(Jury present)

THE COURT: Please, be seated everyone.

Mr. Quigley?

MR. QUIGLEY: Thank you, your Honor.

BY MR. QUIGLEY:

Q. So, we can focus back on Government Exhibit 113-A-T at page 14. If we can start reading at 12:22:30, I will read the part of Samy El- Goarany if you can read the part of Attiya, Agent McNulty?

A. Okay.

"EL-GOARANY: What did my father do? Is he the one that made this complaint? Marwa El Gammal told me my father is the one who is responsible for this problem. Is this true?

"ATTIYA: Yes. Yes.

"EL-GOARANY: God help. I was not aware of this at all. So, you should stop saying that I am the cause of this. Now you know that I am not the cause.

"ATTIYA: Your father is making the problem.

"EL-GOARANY: Why did he do this? Did he tell you?"

A. Attiya posts a hyperlink to a newspaper article.

"ATTIYA: Your father is lying.

"EL-GOARANY: Yes, he is lying, but I want to know why he is lying. He never told me about any of this. Ah, so he is denying to you that he did this?

"ATTIYA: He wants to go back to America.

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McNulty - direct

1 "EL-GOARANY: I know he wants me to come back but
2 glory be to Allah, he did a very, very bad thing."

3 A. Attiya posts a --

4 MS. MIRÓN: Objection to hearsay, your Honor.

5 THE COURT: Overruled.

6 A. Attiya posts an article for a press conference.

7 Q. You don't have to read the whole thing, we will keep it up
8 there a second.

9 If you can go to the next page, Ms. Quinones?

10 We will continue reading:

11 "EL-GOARANY: I do not know what to say, really. I
12 did not even know that dad knew who Gammal was.

13 "ATTIYA: You have to help your brother.

14 "EL-GOARANY: I know, and I am trying to reach dad but
15 he hasn't responded to my messages yet today. What my father
16 did is unacceptable. If he really did this to Gammal, its you
17 Kufr Akhbar. I swear to God."

18 Q. Let's stop there for a second.

19 Agent McNulty, based on your involvement in the
20 investigation, was the defendant arrested because of a
21 complaint by Samy El- Goarany's father?

22 A. No.

23 Q. So, continuing on 9/6/15 at 12:48, can you read the next
24 part?

25 "ATTIYA: Do not leave your brother. You have to tell

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McNulty - direct

1 them that he had nothing to do by going to Syria.

2 "EL-GOARANY: I will, because it is true."

3 A. Attiya posts a sticker.

4 "ATTIYA: You can fool your father.

5 "EL-GOARANY: What do you mean by fool?

6 "ATTIYA: Defraud?

7 "EL-GOARANY: God knows.

8 "ATTIYA: We tell him you come to Istanbul on the
9 condition that he helps Ahmed.

10 "EL-GOARANY: Okay. I tell.

11 "ATTIYA: I tell him you will come to Istanbul but
12 only exit Ahmed.

13 "EL-GOARANY: I will also tell him that he must help
14 Ahmed's mother right now.

15 "ATTIYA: Okay.

16 "EL-GOARANY: I have the mother's number, by the way,
17 phone number.

18 "ATTIYA: Yes. Viper. You do not speak English?

19 "EL-GOARANY: I cannot speak to her. You know I speak
20 poor Arabic.

21 "ATTIYA: Okay.

22 "EL-GOARANY: But God willing, I will try my best to
23 force my father to speak with her and take care of her but, God
24 willing, I will try my best to force my father to speak with
25 her and take care of her."

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McNulty - direct

1 A. There is an attachment.

2 "ATTIYA: The father admitted that he had caused the
3 problem and said he wanted to return to America. We want to
4 record video and published it says that the news published by
5 TV liar. Do you understand?

6 "EL-GOARANY: Save the video but do not publish it
7 yet. Patience, brother.

8 "ATTIYA: Ahmed says that the thing does not know
9 about your trip and I also?

10 "EL-GOARANY: You mean the information in the video?

11 "ATTIYA: Yes. Ahmed did not know anything about your
12 trip. I did not know anything about your trip. Your father
13 injustice Ahmed to be the reason for your return?

14 "EL-GOARANY: Okay. Then publish the video.

15 "ATTIYA: Your father injustice Ahmed to be the reason
16 for your return."

17 Q. There is a hyperlink from Samy Mohamed. Agent McNulty, did
18 you click on the hyperlink in this investigation?

19 A. I did.

20 MS. MIRÓN: Objection hearsay.

21 THE COURT: Overruled to that objection.

22 A. It is a hyperlink that leads to press conference regarding
23 the case.

24 Q. Regarding this case?

25 A. Yes, sir.

Hli5gam3

McNulty - direct

1 Q. So let's stop right there.

2 After that hyperlink, what is the date on that
3 communication from Samy El- Goarany at 15:36:09?

4 A. That was September 6, 2015.

5 Q. What date did we start reading the September conversations
6 on? It is on page --

7 A. It started on September 5th, 2015.

8 Q. So, going back to page 21, after the conversation on, at
9 15:57 on September 6, when is the next time that Attiya and
10 Samy El- Goarany exchange a Facebook message?

11 A. The next day, September 7th, 2015.

12 Q. At what time?

13 A. Attiya's first message is at 18:50:25.

14 Q. Can we read from there to -- and continue reading from
15 there?

16 A. Okay.

17 Q. To page 20:52:08 on page 22:

18 "ATTIYA: Please can record video quickly. Please,
19 send it to us now.

20 "EL-GOARANY: I misunderstood your messages before. I
21 will not record a video. Trust me, it will not help Gammal.
22 The authorities in America have no reason to believe anything I
23 say. They will not free him just because I make a video. It's
24 a waste of time.

25 "ATTIYA: Send video. Lawyer says he's important?

Hli5gam3

McNulty - direct

1 "EL-GOARANY: He has a lawyer now?

2 "ATTIYA: Yeah.

3 "EL-GOARANY: Did the lawyer say that this video will
4 guarantee him his freedom?

5 "ATTIYA: Please send a video. Often. Now, I spoke
6 with Ahmed, who is asking you to send video, is very necessary.
7 Please and please send video. Ahmed says he is important. He
8 says that going to Syria, the result of a personal desire to
9 have and Ahmed had nothing to do so.

10 "EL-GOARANY: It's late night over here and I do not
11 have the ability to make a video where I am. I will let you
12 know tomorrow, God willing."

13 Q. And so, what is the date on this message at 20:52:08, Agent
14 McNulty?

15 A. September 7th, 2015.

16 Q. When is the next message between Samy El- Goarany and
17 Attiya?

18 A. The following day; September 8, 2015.

19 Q. So, can we start reading at 13:33:06 and read to the bottom
20 of page 23?

21 "EL-GOARANY: I will send it soon, God willing. What
22 is your WhatsApp number?"

23 A. A phone number.

24 "EL-GOARANY: Okay. I will send it soon to that
25 number. Patience, God willing."

Hli5gam3

McNulty - direct

1 A. There is a missed call.

2 "EL-GOARANY: I sent the video. Let me know when you
3 receive it.

4 "ATTIYA: Okay.

5 "EL-GOARANY: Make sure this video will be used to
6 help him. I mean, this is a serious thing for me to expose
7 myself like this. I am only doing this to help him and because
8 it is the truth.

9 "ATTIYA: Could it be that the camera close?

10 "EL-GOARANY: Why close? The distance is good enough.
11 If you want to make it closer you can edit the video yourself.

12 "ATTIYA: Okay. Is good."

13 Q. Okay. We can stop right there.

14 Agent McNulty, do you see where Samy El- Goarany and
15 Attiya have referenced a video in here?

16 A. Yes.

17 Q. During the course of this investigation, did you attempt to
18 locate such a video?

19 A. I did.

20 Q. And did you find it?

21 A. I did.

22 Q. Where did you find it?

23 A. It was in the search warrant return for Attiya's Facebook.

24 MR. QUIGLEY: Your Honor, may I approach?

25 THE COURT: You may.

Hli5gam3

McNulty - direct

1 Q. I am handing you what's been marked for identification as
2 Government Exhibit 143. Do you recognize that?

3 A. Yes.

4 Q. What is that?

5 A. This is the DVD the video was burned to.

6 MS. MIRÓN: I am having trouble hearing the witness,
7 your Honor.

8 THE WITNESS: Sorry.

9 This is the DVD the video was burned to.

10 MR. QUIGLEY: Your Honor, the government offers
11 Government Exhibit 143.

12 MS. MIRÓN: Previous objection, your Honor.

13 THE COURT: Overruled. Government Exhibit 143 will be
14 received.

15 (Government's Exhibit 143 received in evidence).

16 MR. QUIGLEY: May we publish 143?

17 THE COURT: You may.

18 MR. QUIGLEY: Thank you, your Honor.

19 (File played)

20 Q. So, when was this video made again, Agent McNulty? Month
21 and year?

22 A. That it was made?

23 Q. Yes.

24 A. That it was posted on or around September 8th.

25 Q. Of what year?

Hli5gam3

McNulty - direct

1 A. 2015.

2 Q. So, I want to step back in time a little bit over -- a
3 little over a year to September of 2014.

4 First, may I approach, your Honor?

5 THE COURT: You may.

6 Q. I am going to hand you Government's Exhibits 122-C, D, E,
7 F, G, and I. Do you recognize those?

8 A. Yes, I do.

9 Q. Are they excerpts of Government Exhibit 122?

10 A. Yes, they are.

11 MR. QUIGLEY: Your Honor, the government offers
12 Government Exhibit 122-C, D, E, F, G, and I.

13 MS. MIRÓN: Previous objection, your Honor.

14 THE COURT: They will be received. Including H?

15 MR. QUIGLEY: No, your Honor.

16 (Government's Exhibits 122-C, D, E, F, G, and I
17 received in evidence)

18 BY MR. QUIGLEY:

19 Q. Can we publish what is in evidence as Government Exhibit
20 122-F-T and have the jury turn in their binders to what is
21 marked Government Exhibit 122-F-T.

22 THE COURT: Very well.

23 Q. Can we go to the entry on the second page on 6/12/14 at
24 7:25:31? And who is the speaker here, Agent McNulty?

25 A. It is Attiya.

Hli5gam3

McNulty - direct

1 Q. What is -- can you summarize what Attiya appears to be
2 discussing here and on the next page?

3 MS. MIRÓN: Objection to the summary, your Honor.

4 THE COURT: Sustained.

5 Q. Let's read the next three lines, or the next three rows. I
6 will read the part of Attiya if you can read the part of the
7 defendant.

8 "ATTIYA: Away from any political, ideological, or
9 even sectarian opinion --

10 THE COURT: Can you slow down, Mr. Quigley?

11 MR. QUIGLEY: Sorry.

12 Q. If you are a supporter or an opponent, or even if you did
13 not have an opinion to start with, you sit there watching:
14 Would you like to know the exact meaning of the word terrorism?
15 Look at what is happening in Iraq. The majority of al-Maliki's
16 soldiers abandoned their vehicles and weapons and ran away as
17 they've heard that the fighters of the Islamic State in Iraq
18 and Levant were coming. They took control of Mosul, the second
19 largest city in Iraq, and entered Takrit in the Salahuddin
20 governorate. They will not sit and wait to fight and that they
21 might possibly resist. They have the fear of previous battles
22 and know that if they will get arrested, they will get dragged
23 along the ground, dissected, and then tied to a pole.
24 Afterwards, they will think whether they will leave him like
25 that until he dies by himself or if they have sympathy for him

Hli5gam3

McNulty - direct

1 and fire the mercy bullet at him. This is for you to know that
2 the Brotherhood are sissies and calling them terrorists is
3 nothing but futility and political intellectual terrorism to
4 all those opposing the coup.

5 Can you say how the defendant responds?

6 A. He responds:

7 "EL-GAMMAL: Beheading has magical effect, Attiya.
8 You know? If we would have had beheaded a few at the time of
9 revolution, the country would have gotten better and everything
10 would have been straightened out."

11 Q. What does Attiya say next?

12 A. Attiya says:

13 "ATTIYA: I watch very carefully what is happening in
14 Iraq because this could be either the beginning sign of
15 breaking what is already broken, or the collapse of the
16 Sykes-Picot with all its consequences."

17 Q. And how does the defendant respond?

18 A. The defendant responds:

19 "EL-GAMMAL: I pray to God to grant them victory and
20 control over entire Iraq and the Levant, then we join them in
21 conquering Egypt and, from there, to Jerusalem, God willing."

22 Q. You can stop there.

23 What is the date of that entry?

24 A. From June 12, 2014.

25 MR. QUIGLEY: May I approach, your Honor?

Hli5gam3

McNulty - direct

1 THE COURT: You may.

2 Q. Handing you what's been marked for identification as
3 Government Exhibit 110-D; do you recognize that?

4 A. Yes.

5 Q. And what is that?

6 A. It's a Facebook messenger conversation between Samy
7 Mohammed and Facebook user 686466726.

8 Q. Is that an excerpt from Government Exhibit 110?

9 A. Yes, it is.

10 MR. QUIGLEY: Your Honor, the government offers
11 Government Exhibit 110-D.

12 MS. MIRÓN: Previous objection, your Honor.

13 THE COURT: 110-D will be received.

14 (Government's Exhibit 110-D received in evidence)

15 BY MR. QUIGLEY:

16 Q. If you would go to page 6 of Government Exhibit 110-D,
17 Agent McNulty? Directing your attention to the top of the
18 page, do you see the date on which that message was sent?

19 A. Yes.

20 Q. What date is that?

21 A. It's August 14th of 2014.

22 Q. And what's the time?

23 A. 03:40 UTC.

24 Q. What does the user of the 726 account say?

25 A. He says: I'm trying to send you a pick but I can't here.

Hli5gam3

McNulty - direct

1 Q. And directing your attention to the top of page 7, the
2 first entry, what does the user of the 726 account appear to
3 say about the picture?

4 A. It says: Anyways, it's a kid pulling a dead man from his
5 hair and smiling.

6 Q. What does he say in the next message?

7 A. A kid with Daesh. They killed this man and ikhwan says he
8 was a pious Sheikh in Iraw.

9 Q. If we go further down the page at 03:48:57 and what does
10 the user of the 726 account says there?

11 A. Says: One of the Ikhwan I know shared the pic and
12 insulted Daesh. Surprisingly, I found el-Jammal commenting
13 saying seriously kos omak, El Dawla (he means Daesh) will
14 continue to expand.

15 Q. And how does Samy El- Goarany respond?

16 A. Samy asked: He said that?

17 Q. And what does he say -- sorry.

18 What does the user of the 726 account say in the next
19 message?

20 A. Says: As I told you, the difference between ikhwan and
21 Daesh is huge. No hope.

22 Q. So, can we go to the bottom of the page?

23 MS. MIRÓN: Your Honor, may we approach briefly?

24 THE COURT: Sure.

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McNulty - direct

1 (At side bar)

2 MR. HABIB: Just a few points.

3 On this exhibit, when the Court admitted it during
4 motion *in limine* practice, the Court said it would give a
5 limiting instruction and I would just ask the Court to give the
6 limiting instruction that the Court said it was going to give,
7 that there is no evidence that Mr. El-Gammal made the
8 statements that are being attributed to him.

9 MR. QUIGLEY: That was the Court's ruling. That's
10 fine. That was your ruling, your Honor, that's fine.

11 THE COURT: Okay. This is only with respect to this.

12 MR. QUIGLEY: This is the only exhibit that is being
13 offered to show the effect on the listener.

14 MR. HABIB: That's right.

15 THE COURT: Okay. So that it is not being for its
16 truth.

17 MR. HABIB: Exactly what the Court said.

18 THE COURT: Can I have this?

19 MR. HABIB: Sure can.

20 MS. MIRÓN: And then after this witness we are going
21 to ask that the Court issue an instruction that the jury can
22 draw no negative inference related to Mr. El-Gammal's
23 imprisonment, nor were those statements offered for the truth.

24 MS. SHROFF: Also his arrest.

25 THE COURT: Also his arrest.

Hli5gam3

McNulty - direct

1 MS. SHROFF: Thank you.

2 MR. HABIB: One more point.

3 We are open to ways to address this but there were --
4 Attiya made a statement that Mr. El-Gammal's lawyer said making
5 the video was important. Obviously we didn't make the
6 statement but we are concerned that the jury may think that we
7 did.

8 THE COURT: Okay.

9 MR. HABIB: So I don't know what instruction may be
10 appropriate. I don't know if the Court has other ideas.

11 THE COURT: He had a lawyer in Arizona, correct?

12 MR. HABIB: He did, but at the time that -- he did
13 have a lawyer in Arizona. At the time that the statements were
14 made we were counsel of record.

15 MS. SHROFF: We were not.

16 MR. HABIB: In September we were here.

17 THE COURT: I think there is no dispute that as a
18 factual matter you guys didn't ask for the statement.

19 MR. HABIB: No.

20 MR. QUIGLEY: And we would not dispute a statement
21 instruction that the Federal Defenders did not -- did not.

22 THE COURT: Okay. Why don't you work out some
23 language I am happy to tell them.

24 MR. HABIB: I think you heard evidence that Attiya
25 said that Mr. El-Gammal's lawyers asked for the video and said

Hli5gam3

McNulty - direct

1 it was important. I instruct you that Mr. El-Gammal's lawyers,
2 the Federal Defenders of New York made no such statement.

3 MR. QUIGLEY: His current attorneys.

4 THE COURT: His current attorneys.

5 MR. QUIGLEY: Yes.

6 THE COURT: So you want me to give this instruction
7 now, give your instruction when he is done?

8 MS. SHROFF: Wait. Are you suggesting that you can't
9 identify who his client was? Why can't you? You identify
10 yourself as the United States Attorney's office all the time,
11 it is perfectly appropriate who we are. That's who we are.

12 MR. QUIGLEY: That's not what I was saying.

13 MS. SHROFF: You should specify which lawyer, that
14 we're the Federal Defenders of New York, we are. It is
15 correct. It is a factually accurate statement because there is
16 other comments he heard about people hiring lawyers for him and
17 it is accurate to make sure it is clear who we are.

18 MR. QUIGLEY: I don't think I was disputing that.

19 THE COURT: Right.

20 So, I will give this one now, yours when he is done,
21 and then the one concerning the request for the tape when?

22 MR. HABIB: I think also when you give the one with
23 respect to imprisonment.

24 THE COURT: Very well.

25 MR. HABIB: And arrest.

Hli5gam3

McNulty - direct

1 THE COURT: Okay.

2 MR. HABIB: Thanks.

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McNulty - direct

1 (In open court)

2 THE COURT: Ladies and gentlemen, with respect to the
3 exhibit that we are reviewing now, there is a stipulation
4 between the parties that there is no -- that these statements
5 attributed to Mr. El-Gammal are being admitted not for the
6 truth but rather for the effect on the listener, in this case I
7 believe it is Mr. Attiya, and there is no evidence that
8 Mr. El-Gammal actually made these statements. Again, they're
9 not being offered for truth, okay?

10 MR. QUIGLEY: Your Honor, if I may just clarify, the
11 listener here is Mr. El- Goarany.

12 THE COURT: I'm sorry. I apologize.

13 BY MR. QUIGLEY:

14 Q. Directing your attention to the bottom of page 9 to the
15 message at 03:59:22, can we read from there to the end? And I
16 will read the part of Mr. El- Goarany, if you can read the part
17 of the user of the 726 account, Agent McNulty?

18 "726: Okay. SubHanAllah. I was just looking at the
19 comments section at that ikhwany, bro, and I found Jammal
20 insulting because he defends Daesh. The world is small and it
21 seems Daesh grabbed the attention of the world.

22 "EL-GOARANY: I'm confused. Jammal was defending the
23 ikhwany or defending Daesh?

24 "726: Daesh.

25 "EL-GOARANY: Ah, okay.

Hli5gam3

McNulty - direct

1 "726: Saying to the ikhwani kos omak. The Dawla will
2 continue to expand.

3 "EL-GOARANY: I see.

4 "726: But such conflict isn't healthy, right?

5 "EL-GOARANY: I wonder what's the group's explanation
6 for killing this man. That's the messed up part. Everybody
7 tells a different story. It's hard for us to know the truth.

8 "726: People putting Rabaa pics but insulting each
9 others. Other.

10 "EL-GOARANY: It is unhealthy for sure.

11 "726: Even if Daesh was truthful, the pics are stupid
12 and beget more harm than benefit.

13 "EL-GOARANY: I completely agree. They do serve a
14 purpose, to scare their enemies. And it's worked a lot for
15 they've scared the -- explicit -- out of Maliki's men and
16 Assad's too. They know what they're doing with these pics.
17 Still, though, doesn't make it right.

18 "726: At that kid's age I most probably was happy
19 that I won't need pampers anymore. I can't survive in this
20 cruel world.

21 "EL-GOARANY: It's ugly, man. That's war. I hate the
22 fact that the group does such nasty things in the name of
23 Islam. They should be condemned but at the same time I can't
24 consciously ignore the fact that they would never exist if it
25 wasn't for our savage regimes. Some bros started freaking out

Hli5gam3

McNulty - direct

1 when they saws pics of Daesh hanging the heads of Bashar's
2 soldiers on the gates of Raqqa. But what do they expect?
3 After everything that's happened, that these rebels are just
4 going to give them ice cream? Bashar is even worse with the
5 prisoners he has."

6 Agent McNulty, what is the time stamp on that last
7 message?

8 A. It is August 14th, 2014 at 04:08:57 UTC.

9 Q. And, Ms. Quinones, can we put up 04:08:57, like he said?

10 And if we could put up Government Exhibit 100-B from the
11 defendant's Facebook account and go to page 5 and highlight the
12 entry on 20/08/14 and go to the entry at 04:06:00?

13 So, looking at that exhibit, that entry in 100-B of
14 the defendant's account, how does that time compare to the
15 entry we just watched and looked at in 110-D?

16 A. They're the same day, a few minutes apart.

17 Q. So the last one in 110-D is what time?

18 A. Say again?

19 Q. So the last one in 110-D is what time?

20 A. Ends at 04:08:57.

21 Q. So you are saying this is about two minutes earlier?

22 A. Yes.

23 Q. And if we could go back to 110-D for a second and go to
24 page 10 and blow up the first two entries on the page where
25 El Goarany asks whether Jammal was defending the ikhwani or

Hli5gam3

McNulty - direct

1 defending Daesh and Samy Mohamed says Daesh; what is the time
2 on those?

3 A. 04:00:01 and 04:00:08 UTC.

4 Q. So that was about six minutes before the conversation in
5 100-B regarding cryptocat?

6 A. Yes. About that.

7 Q. We can take that down and go to Government's Exhibits
8 100-E-T and can we go to page 72? It is in the jury's binders
9 if anyone wants to take a look.

10 Agent McNulty, who is this conversation between?

11 A. Between Gammal and Facebook user Mah Moud.

12 Q. And have you previously reviewed this conversation in
13 preparation for testimony today?

14 A. Yes.

15 Q. Can you read the first entry on September 9th, 2014 at
16 20:39?

17 A. "Imagine, Omar told my dad that I support Daesh so that my
18 father would warn me. My father was worried about me and he
19 called me. Omar knew from my postings, I mean."

20 Q. And can we go through, Ms. Quinones, just scroll through
21 pages 73 through 77?

22 Again, what does it appear, Agent McNulty, that the
23 defendant did with the majority of the messages on those pages?

24 A. The majority of the messages were deleted.

25 Q. Can we go back to page 74 to a few that weren't deleted and

Hli5gam3

McNulty - direct

1 can you read from 20:53:03 to 20:04:29?

2 A. Mah Moud states or asks: How?

3 Gammal replies: How come what? I do not understand.

4 Mah Moud then says: The one who travels, how he goes
5 in?

6 And Gammal replies: I don't know.

7 Q. What is the date on these communications? Look at page 72.

8 A. These are from September 9th, 2014.

9 Q. If we can take a look at pages 78 through 84 and, again,
10 just slowly scroll through?

11 Agent McNulty, based on your review of this exhibit of
12 this exhibit now and your prior review, what does Mah Moud
13 appear to be discussing here with the defendant?

14 MS. MIRÓN: Objection to the summary.

15 THE COURT: Sustained.

16 Q. So, if we can go back to page 79?

17 Agent McNulty, the entry on 9/13/14 at 11:43:14, can
18 you read the first two sentences?

19 A. "Security experts expect the spread of electronic
20 eavesdropping in the coming days and complete violation to the
21 privacy of users under the pretext of countering Daesh. Daesh
22 will not be the only one to have its privacy violated."

23 Q. If we can move ahead to page 80 and if you could read --
24 sorry -- the last sentence on page 79 carrying over onto page
25 80?

Hli5gam3

McNulty - direct

1 A. "Regarding the social network sites, of course Facebook is
2 not secure and there is no privacy. The violation of privacy
3 is beyond all imaginations. Twitter is safe and secure to
4 communicate through."

5 Q. And if we can go ahead to page 81, the entry on 10/8/2014?
6 Can you read that entry at 7:59:18?

7 A. "Peace be upon you, Mr. Ahmed. How are you? Why did you
8 come back from there?"

9 Q. And then on the entry on page 82 on 10/15/14, can you read
10 the first sentence that Mah Moud sends to the defendant?

11 A. "The applications Skype, BBM, Wee Chat, Tango, WhatsApp,
12 Line, Facebook messenger are not secure to connect since most
13 of them are not encrypted and the others give governments the
14 right to monitor their users' conversations."

15 Q. And if we can go ahead to page 83, what does the defendant
16 say at 9:39:46?

17 A. "There is a signal application for iPhone."

18 Q. 9:39:46 at the bottom of the page.

19 A. Sorry.

20 "Thank you, brother."

21 Q. And then on the next page?

22 A. At 9:40:10 Gammal posts: I found something called
23 Surespot.

24 Q. Okay. We can take that down.

25 MR. QUIGLEY: May I approach, your Honor?

Hli5gam3

McNulty - direct

1 THE COURT: You may.

2 Q. Agent McNulty, handing you what's in evidence as
3 Government's Exhibits 120-S-T and 120-A-T. These are also in
4 the jury binders. Can we publish what is in evidence as
5 Government's Exhibits 100-S-T from the defendant's Facebook
6 account and look at segment L beginning on page 34?

7 Who are these messages between?

8 A. Attiya and Gammal.

9 Q. And what is the date on the messages on pages 33, 34, and
10 35?

11 A. These are from 10/27/2014.

12 Q. And if we can now look at Government Exhibit 120-A-T, page
13 43 from Attiya's account? What are these, Agent McNulty?

14 A. This is a conversation from Attiya's Facebook between him
15 and Gammal.

16 Q. Is this the same conversation in 100-S, segment L?

17 A. Yes.

18 Q. Just from a different account?

19 A. Correct.

20 Q. So, what do you see when you look at 120-A-T, what do you
21 see with respect to most messages in Attiya's account in
22 segment L?

23 A. They're deleted.

24 Q. So let's go back to 100-S, segment L, and read from
25 4:01:49 -- sorry, read from the beginning until 14:47:24 and I

Hli5gam3

McNulty - direct

1 will read the part of the defendant and you read the part of
2 the Attiya:

3 "EL-GAMMAL: My friend will get there on November 6.

4 "ATTIYA: Fine. Let him call me. The day of November
5 7, the airport at 5:45 a.m., flight number TK0004, terminal 1.

6 "EL-GAMMAL: How could he call you? He doesn't know
7 Arabic. He could barely manage.

8 "ATTIYA: No problem. Don't worry.

9 "EL-GAMMAL: You just take him to the address where
10 the hotel is."

11 Q. Now if we can stop at that entry at 14:27:24; what does it
12 appear that the defendant did with that message?

13 A. It's been deleted.

14 Q. If you go to 120-A-T to the same message which is on page
15 43, were you able to find it in 120-A-T?

16 A. Yes.

17 Q. And what happened in 120-A-T also?

18 A. Also deleted.

19 Q. If we go back to 100-S at 33? Do you see where, beginning
20 at 14:47:31 Attiya says: "In face," there is some question
21 marks, and then there are three deleted messages at 14:47:46,
22 14:48:05, and 14:48:27?

23 A. Yes. I see that.

24 Q. And when you go to 120-A-T were you able to find those
25 messages?

Hli5gam3

McNulty - direct

1 A. Yes.

2 Q. The ones at 14:47:46, 14:48:05 and 14:48:27?

3 A. Yes, I did.

4 Q. And what do you see when you go to 120-A-T?

5 A. They're also being shown as deleted from the account.

6 Q. So let's go back to 100 S, segment L and continue reading
7 from 14:48:44. I will read the part of the defendant, if you
8 can read the part of Attiya.

9 A. Okay.

10 "EL-GAMMAL: Yes, yes. Delete."

11 A. There is an attachment:

12 "ATTIYA: Okay.

13 "EL-GAMMAL: Delete, man.

14 "ATTIYA: Fin. Fine.

15 "EL-GAMMAL: What disaster with this Egyptian
16 ignorance. Please concentrate, Attiya, and delete the comments
17 you have.

18 "ATTIYA: I deleted the conversation, all of it.

19 "EL-GAMMAL: Okay. Most importantly, I am not going
20 to tell you anything more -- I'm not going to tell you more.
21 Please meet him at the airport. He knows how you look.

22 "ATTIYA: Is he staying in a hotel or should I make a
23 reservation for him?

24 "EL-GAMMAL: No. He reserved one night at a hotel in
25 the old city.

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McNulty - direct

1 "ATTIYA: Okay."

2 Q. And there is an address and if you could pick up at
3 14:59:19?

4 "ATTIYA: Ha ha ha ha.

5 "EL-GAMMAL: Do you know some English now or still
6 ignorant?

7 "ATTIYA: Some.

8 "EL-GAMMAL: God will make things easier. Thank you,
9 Young, Attiya. How is work at your channel?

10 "ATTIYA: Ha ha ha ha. Perfect".

11 Q. So, if we can back up one second to the entry at 14:49:45,
12 do you where that attachment has been deleted?

13 A. Yes.

14 Q. When you look at 120-A-T, segment L, what do you see with
15 respect to that message?

16 A. That same message at 14:49:25 has also been deleted.

17 Q. Are you familiar with what's been marked for identification
18 as Government's Exhibits 102? It is not in front of you.

19 A. What is 102?

20 Q. Did you review the contents of Government Exhibit 102 in
21 preparing for testifying?

22 A. Yes. Yes, I did.

23 Q. That's a record from the defendant's Facebook account?

24 A. Yes.

25 Q. And were you able to find any communications between the

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McNulty - direct

1 defendant -- any Facebook messages between the defendant and
2 Samy El- Goarany in GX- 102?

3 A. No.

4 MR. QUIGLEY: No further questions, your Honor.

5 THE COURT: Very well.

6 Ladies and gentlemen, before cross-examination of the
7 Agent just a couple of things I wanted to go over with you.

8 First of all, during some of the conversations that
9 were read to you through Agent McNulty, reference was made to
10 the fact that Mr. El-Gammal was arrested and was imprisoned
11 immediately after his arrest for some period of time. As I
12 told you when the trial started, Mr. El-Gammal is presumed
13 innocent. He is as innocent as he sits in this courtroom today
14 as you or I and that presumption never changes. It doesn't
15 change unless and until you, the jury, find after hearing all
16 of the evidence and after having had a full opportunity to
17 deliberate, to determine that he is guilty of the crimes
18 charged. But, until then, the fact that he may have been
19 arrested and may have been imprisoned should play no role in
20 your deliberations.

21 Secondly, there was some reference made to -- in one
22 of the tapes, I believe it was Mr. Attiya that was speaking
23 that said, in effect, that Mr. El-Gammal's lawyers asked for a
24 videotape to be made by Samy El- Goarany. There is no dispute
25 in this case that Mr. El- Gammal's lawyers, the three lawyers

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McNulty - cross

1 sitting here today or any member of Federal Defenders of New
2 York made no such request. Okay?

3 With that, cross-examination.

4 CROSS EXAMINATION

5 BY MS. MIRÓN:

6 Q. Good afternoon, Agent McNulty.

7 A. Good afternoon.

8 Q. How long have you been an FBI agent?

9 A. About 11 months.

10 Q. Okay.

11 And you were a police officer before that?

12 A. Yes, I was.

13 Q. So you are aware that it is not good practice to have
14 civilians investigate a criminal matter, right?

15 MR. QUIGLEY: Objection. Outside the scope.

16 THE COURT: Overruled.

17 A. What do you mean?

18 Q. I mean when you conduct investigations, the agents are
19 supposed to do that, not civilians involved in a criminal
20 matter, correct?

21 A. Can you be more specific?

22 Q. Sure.

23 Are you aware that Mohammed El Goarany traveled to
24 Turkey in May of 2015?

25 A. Yes.

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McNulty - cross

1 Q. Okay. I'm talking about that.

2 So, fair to say it is not good FBI practice to have
3 family members of targets of investigations going to another
4 country to investigate, right?

5 MR. QUIGLEY: Objection. Outside the scope.

6 THE COURT: Overruled.

7 A. Say it one more time?

8 Q. Is it FBI protocol to have the father of a target of a
9 terrorism investigation go to a different country to
10 investigate himself? Is that proper FBI protocol?

11 A. That would be situation-dependent.

12 Q. Okay. So it is your testimony that it's a good idea,
13 depending on the situation, to have a father of the target of
14 the investigation go out and interview witnesses?

15 A. No.

16 Q. Okay. That's what I'm asking.

17 So, let's put some of this in context. Mohammed
18 El Goarany went to Turkey in May of 2015, right?

19 MR. QUIGLEY: Your Honor, can we approach?

20 THE COURT: Yup.

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McNulty - cross

1 (At side bar)

2 MR. QUIGLEY: Your Honor, this agent testified that he
3 has only been on the case since the spring of 2016, a year
4 after Mohammed El Goarany went over there. He has no
5 first-hand knowledge of this. This is all hearsay and it is
6 not -- I mean, it may be proper impeachment of Mohammed
7 El Goarany but this is not the witness to do it.

8 THE COURT: Yes. I don't know what Ms. Mirón intends.

9 I allowed that initial question because I didn't know
10 where you were going but where are you going?

11 MS. MIRÓN: Well, to be fair, the exhibits that were
12 published through this witness addressed May 5th, 2015
13 conversations with Attiya. I am placing those in context.

14 MR. QUIGLEY: They were not exhibits on May 5th that
15 were published through this witness. We started later on. I
16 think there is one conversation on May 7th. He didn't testify
17 about anything on May 6th. The majority --

18 THE COURT: The majority?

19 MR. QUIGLEY: The majority was from the video which
20 was in September of 2015 and then some earlier conversations in
21 the fall of 2014. He wasn't even on -- he wasn't even in the
22 FBI in May 2015 when Mr. El- Goarany went overseas. He has
23 been an FBI agent 11 months.

24 THE COURT: Maybe this is not the witness to do it
25 through --

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McNulty - cross

1 MS. MIRÓN: Well, is it within the scope of his
2 direct.

3 MR. QUIGLEY: No, it is not, your Honor. He didn't
4 say anything about Mohammed El Goarany.

5 THE COURT: I think the alternative is to have the
6 defense call him as a witness.

7 MR. QUIGLEY: Right. I mean they can -- I just --
8 they can inquire. They inquired of Agent Collie about similar
9 issues. Agent Collie was one of the case agents at the time
10 and that was a big part of his cross, that they crossed him
11 extensively on Mohammed El Goarany's unauthorized travel and it
12 is getting cumulative, number one, and this is not -- we put up
13 one of the case agents, it was one of the case agents at that
14 time who testified that Mohammed El Goarany was not authorized
15 to go there, that he was stopped by the FBI as soon as he got
16 off the plane at JFK and his devices were searched.

17 MS. MIRÓN: Your Honor, they introduced evidence
18 through this witness of missed phone calls between Attiya and
19 Samy. I am entitled to place those in context about what
20 prompted those phone calls. It was Mohammed El Goarany's trip.

21 THE COURT: Okay. I mean, I will allow you some
22 leeway in questioning him about that but try to stay within
23 some bounds. Okay?

24 MS. MIRÓN: Okay.
25

Hli5gam3

McNulty - cross

1 (In open court)

2 BY MS. MIRÓN:

3 Q. Could you display Government's Exhibit 113-D-T, I believe
4 it is page 18? A little bigger -- actually, let's start from
5 the beginning, first page, and just scroll until May 5th.

6 So you, when reading this exhibit, said there were
7 phone calls that were missed from Attiya to Samy Mohammed,
8 right?

9 A. Yes, I did.

10 Q. But looking at it closely it says: Missed false, correct?

11 A. Correct.

12 Q. And so, indeed, on May 7th, 2015, a call was made and
13 received, correct?

14 A. Yes.

15 Q. And the duration was 51 seconds?

16 A. Correct.

17 Q. That was a Facebook call, right?

18 A. Yes.

19 Q. Not a cellular phone call. In other words, not a direct
20 number from one cell phone to the other, this was through
21 Facebook?

22 A. From what I understand that's how it works, yes.

23 Q. Okay.

24 If you scroll back up to January 17th or 16th, you
25 read this on direct too, right?

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McNulty - cross

1 MR. QUIGLEY: Objection. Mischaracterizes the
2 testimony.

3 THE COURT: Overruled.

4 Q. Well, let me just focus your attention to January of 2015.

5 17:24:51 Samy asks Attiya for a phone number, right?

6 A. Yes.

7 Q. And he gives it to him, correct?

8 A. Yes.

9 Q. Fair to say in reading this that Samy didn't have the phone
10 number yet, right?

11 A. I don't know.

12 Q. Based on your review of this exchange?

13 A. You're asking if he had a phone number previous to this
14 exchange?

15 Q. I'm asking you whether he asked for the phone number on
16 that date.

17 A. Yes, he asked for a phone number.

18 Q. Okay. And it was given on that date, right?

19 A. That phone number, yes.

20 Q. Okay.

21 Let's go to Government Exhibit 120-A-T, page 53, and
22 scroll up until we can see the date, May 5th.

23 So, when you testified about communications between
24 Attiya and Samy on May 7th, that followed this May 5th
25 exchange, right?

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McNulty - cross

1 A. Yes.

2 Q. And scroll down to the next page and highlight 18:57:11?
3 Fair to say Gammal is saying: Maybe his father is using his
4 account.

5 Is that what it says?

6 A. Yes, it does.

7 Q. Thank you.

8 When you testified about the video that Attiya
9 solicited from Samy, in that exchange Samy gave him a WhatsApp
10 number, right?

11 A. One of them. I remember there was a WhatsApp number
12 exchange. I don't recall who offered.

13 Q. But you know that it was September 7th of 2015? Would you
14 like to refresh your recollection?

15 A. Yes, please.

16 Q. Can you publish that exchange between Attiya and Samy
17 regarding the video, please?

18 Around September 7th at 2015 okay, that's the
19 exchange, September 8th, Samy tells Attiya I will send it soon,
20 God willing. What is your WhatsApp number.

21 Right?

22 A. Yes.

23 Q. So, fair to say Samy didn't have Attiya's WhatsApp number
24 at that point before he asked for it?

25 A. Yes, I think that can be assumed.

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McNulty - cross

1 Q. Okay.

2 Attiya Aboualala is a journalist in Turkey, right?

3 A. From what I know, yes.

4 Q. From your review of all of the materials you were provided
5 in the investigation of this case he is a journalist, right?

6 A. Yeah. It looks like he does journalism, some kind of media
7 outlet.

8 Q. Okay, and he escaped Egypt and went to Turkey around
9 September of 2014?

10 A. I don't know.

11 Q. You didn't review his own Facebook messages?

12 A. Attiya?

13 Q. Yes, Attiya's.

14 A. Yes, I have looked at them.

15 Q. And the exchange with Mr. El-Gammal about his travel to
16 Turkey, did you review that?

17 A. I probably have, yes.

18 Q. Okay.

19 So, when we come back from lunch we will publish that
20 and perhaps you can see if you recognize it.

21 A. Okay.

22 Q. Are you familiar with the Muslim Brotherhood and the term
23 ikhwan?

24 A. I have heard it before, yes.

25 Q. So, ikhwan is another term from Muslim Brotherhood, right?

Hli5gam3

McNulty - cross

1 A. Yes.

2 Q. And Daesh is a derogatory term for ISIS?

3 A. I don't understand it to be derogatory.

4 Q. Well, ISIS members don't use that term to refer to
5 themselves, is that right?

6 A. I don't know.

7 Q. You work in the counter-terrorism unit of the New York FBI
8 office?

9 A. Yes.

10 Q. And you don't know whether ISIS members refer to themselves
11 as Daesh?

12 A. I can't make a blanket statement of what they, every single
13 member of ISIL or ISIS calls themselves.

14 Q. What do you know about the term Daesh?

15 A. It's one word that is kind of a -- it is saying the actual
16 acronym.

17 Q. ISIS members call themselves members of the state, right?

18 A. Yes.

19 Q. They don't say Daesh, do they?

20 A. I don't know.

21 Q. Okay.

22 You have reviewed profile pictures of Mr. El-Gammal
23 posted on his own Facebook page, right?

24 A. Yes.

25 Q. And are you familiar with the four finger symbol?

Hli5gam3

McNulty - cross

1 A. Yes.

2 Q. What is that symbol?

3 A. It's referring to four, I believe it was younger men,
4 killed in Rabaa during a protest.

5 Q. Right.

6 What was Rabaa?

7 A. That might have been the University. I don't remember,
8 specifically, what Rabaa was.

9 Q. Okay. Just one moment.

10 (Counsel conferring)

11 MS. MIRÓN: This might be a good time to break for
12 lunch if that's okay, your Honor.

13 THE COURT: Absolutely.

14 Ladies and gentlemen, we will break for lunch now.
15 Please be in the jury room no later than 1:30 so we can get
16 started. Until then, please do not discuss the case.

17 (Continued on next page)

Hli5gam3

McNulty - cross

1 (Jury not present)

2 MR. QUIGLEY: I don't see either lawyer here for my

3 1:30.

4 MS. SHROFF: They might be in your other courtroom.

5 THE COURT: Anything for me?

6 MR. QUIGLEY: Not from us, your Honor.

7 MS. MIRÓN: No, your Honor.

8 THE COURT: Okay. 1:30.

9 (Luncheon recess)

10 (Continued on next page)

H1I3GAM4

AFTERNOON SESSION

1:30 p.m.

(In open court; jury not present)

MR. HABIB: Your Honor, just two brief evidentiary matters before the jury comes back. We have two evidentiary memos that the parties have discussed. I think they require court action.

The first concerns Defense Exhibit -- Ms. Miron is going to hand up copies to the Court. The first concerns Defense Exhibit 122-II-T which was the subject of a motion in limine on which court ruled yesterday. This is a September 2015 Facebook conversation between Attiya and an individual named Ahmed Ghanim. We indicated that at least two statements in the exhibit were admissible pursuant to Rule 806. We just want to clarify the Court's ruling. Is the entire exhibit admissible? Is that the Court's ruling?

THE COURT: It's not.

MR. HABIB: Which part is admissible?

MR. QUIGLEY: I think the Court had ruled that the part about Attiya saying "I instructed Samy to make the video" was admissible and that was the only thing that was admissible under 806.

THE COURT: Weren't there two parts?

MR. HABIB: Yes.

MR. QUIGLEY: There were two parts that the defense

H1I3GAM4

1 argued were admissible. Their theory of admissibility on the
2 first part was, which is the part at 13:07:55 was to impeach
3 the statement about Brother Ahmed that the government ended up
4 not offering. So I think that was -- so the only part that is
5 coming in under 806 is the entry at 13:09:37 when Attiya says
6 "I asked Samy to record a video and say he went to Syria on his
7 own free will."

8 MR. HABIB: In light of the government's election to
9 withdraw the Brother Ahmed comment, we would respectfully
10 submit that the first statement, "Samy's father accused him
11 only because Samy knows it but he has nothing to do with Daesh"
12 is still admissible on either of two grounds.

13 The first is it is admissible to impeach suggestions
14 and other statements by Attiya that our client was affiliated
15 with ISIS. In particular the exchanges elicited during Special
16 Agent McNulty's testimony concerning the use of encrypted apps
17 by ISIS, and our client's statement "thank you" at the end of
18 that exchange. And second we think it is also necessary for
19 the non-hearsay purpose of providing context and
20 intelligibility to the entire conversation.

21 MR. QUIGLEY: With respect to those, the first
22 exchange Mr. Habib referenced was between Mamoud and the
23 defendant. So Attiya's statement is not impeaching anyone
24 under 806. So that doesn't come in under that.

25 I think context, I don't think it provides any

H1I3GAM4

1 context. It says they can elicit date that 9/8/15 and say
2 13:09:37 Attiya said "I asked Samy to record a video and say
3 that he went to Syria out of his own will." That gets them
4 exactly where they want to be. That will be clear to the jury.

5 THE COURT: I agree. So only that statement will come
6 in. And the other one?

7 MR. HABIB: The second exhibit is Defense Exhibit
8 122-FF-T. The government had moved in limine to preclude this
9 exhibit on -- is it relevance grounds? We had asked the Court
10 to defer ruling while we considered whether or not we sought to
11 introduce the exhibit. We now seek to introduce the exhibit.

12 This is a November 2014 Facebook conversation between
13 Attiya and an individual named Kamal Imad in which Attiya and
14 Mr. Imad discuss Attiya's work as a journalist in Egypt, in
15 which Mr. Imad discusses the possibility that he will emigrate
16 from Egypt to Turkey, in which Attiya offers to provide
17 assistance both in terms of the logistics of the move,
18 residency expenses, as well as him finding work.

19 We think that these statements are relevant because
20 they show, as the Court has already ruled with respect to other
21 exhibits, that Attiya has a legitimate job in Turkey, that he
22 is a journalist. And more precisely, that it was not at all
23 unusual for Attiya to assist Egyptians leaving Egypt and coming
24 to Turkey, both in terms of acquiring housing and acquiring
25 work. And on a similar rationale to the exhibit that the Court

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1 admitted yesterday via motion in limine, this evidence is
2 relevant to negate the government's theory of the purpose for
3 Mr. El Gammal's referral of Samy to Attiya.

4 MR. QUIGLEY: Your Honor, if I may. So this again was
5 an exhibit we had moved in limine to keep out prior to trial.
6 The defense didn't respond because they said they were still
7 assessing whether to use it.

8 There is I think a significant hearsay issue with this
9 exhibit. Mr. Habib's kind of implicitly alluded to that in
10 saying this shows what Attiya was doing in Turkey. These
11 statements are being offered for the truth of the matter
12 therein. They've already introduced evidence about Attiya's
13 work as a journalist.

14 But just taking some of the specific statements and
15 looking at the hearsay issues involved in them. At 21:14:19,
16 Mr. Ahmed says "You know that my problem is I have a family and
17 my source of income here will stop and I have to figure things
18 out. I have contacts with the Brotherhood and I've been known
19 to them for so long. My son takes part in protests and I do
20 sometimes."

21 Next page, "The coup has taken a sharp downturn at a
22 high speed. That increase the fears very much. But the
23 revolution has specific formulas and they're falling into place
24 now. The economic crisis is getting more acute."

25 These are all statements of fact. Attiya at the

H1I3GAM4

1 bottom of the page "I'm waiting for your proposal in a form
2 that can be presented for people that are waiting for you in
3 Turkey."

4 Next final page "Egyptians currently receive
5 humanitarian residency."

6 Those are all statements of fact that are coming in
7 for the truth of the matter asserted. And so the defense can't
8 use the rule of completeness to bootstrap their own evidence in
9 here. So, I think this should be excluded on hearsay grounds.

10 MR. HABIB: Your Honor, the statements that the
11 government has cited by Kamal Imad are not being offered for
12 their truth. None of Kamal Imad's statements are being offered
13 for their truth. They're being offered to show their effect on
14 Attiya, i.e. the effect that when Egyptians describes problems
15 in Egypt, and a desire to emigrate to Turkey, Attiya's responds
16 by offering assistance, both logistical and professional.

17 MR. QUIGLEY: Again, even Attiya's statement on the
18 top of page two "I never spoke to anyone in Egypt since the
19 coup and found they desired to stay in Egypt." That's a
20 statement of the factual assertion.

21 THE COURT: There are any number of factual assertions
22 by Attiya in this exhibit. And certainly in this form I'm not
23 going to allow it in. If you want to cut it down in some
24 fashion and have me take a look at it, I'm happy to do it. As
25 it stands I'm not going to allow it.

H1I3GAM4

1 MR. HABIB: Thank you, your Honor.

2 MR. QUIGLEY: Thank you, your Honor.

3 THE COURT: Let's get the jury.

4 (Continued on next page)

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H1I3GAM4

McNulty - cross

1 (Jury present)

2 THE COURT: Ms. Miron.

3 MS. MIRON: Thank you.

4 CROSS-EXAMINATION

5 BY MS. MIRON:

6 Q. Agent McNulty, let me get a sense of how much you're
7 familiar with this case.

8 You've been working on it since spring of last year?

9 A. Yes.

10 Q. Have you had conversations with the prosecution about it?

11 A. Yes.

12 Q. How about Agent Collie?

13 A. Yes.

14 Q. And were you involved in prep sessions with some of the
15 witnesses?

16 A. Yes.

17 Q. Who in particular?

18 A. Tarek El-Goarany, Theresa El-Goarany, Mohammed El-Goarany,
19 various custodians.

20 Q. Okay. Did you review Attiya Aboualala's Facebook account?

21 A. Yes, I looked at that time.

22 Q. And the translations of some of those communications?

23 A. Yes.

24 Q. Okay. So, let's try again with Rabaa Square. It was a
25 massacre, right?

H1I3GAM4

McNulty - cross

1 A. Yes.

2 Q. There weren't just four people who died. It could have
3 been a thousand who were killed?

4 A. Yes, that's correct.

5 Q. Up to 4,000 were killed?

6 A. I don't know.

7 Q. But those were supporters of Morsi.

8 A. Yes.

9 Q. Muslim Brotherhood members, right?

10 A. Yes.

11 Q. And Attiya Aboualala was present during that protest?

12 MR. QUIGLEY: Objection. Hearsay.

13 THE COURT: Overruled.

14 A. I don't know.

15 Q. Based on review of Attiya Aboualala's Facebook account, do
16 you know?

17 A. No.

18 Q. Do you know whether Mr. Gammal was present in Rabaa Square?

19 A. No.

20 Q. You don't know if that's how they met?

21 A. No.

22 MS. MIRON: Okay. So, at this point I would ask that
23 a profile photo be admitted, and we can raise it at sidebar,
24 your Honor, if necessary, but profile photo of Mr. Gammal with
25 the four finger sign.

H1I3GAM4

McNulty - cross

1 MR. QUIGLEY: What is the exhibit number?

2 MS. MIRON: It is in Government Exhibit 100, page
3 1565.

4 MR. QUIGLEY: We have no objection, your Honor.

5 THE COURT: Okay.

6 MS. MIRON: Thank you. I'd ask that the government
7 Exhibit 100, page 1565, be displayed.

8 THE COURT: Are you moving for the admission of that
9 exhibit?

10 MS. MIRON: I am, thank you.

11 THE COURT: We'll have to give it a defense number if
12 you don't mind.

13 MS. MIRON: Defense 100-GG.

14 THE COURT: Okay. Do we have that exhibit?

15 MS. MIRON: Thank you.

16 (Defendant's Exhibit 100-GG received in evidence)

17 Q. Okay. Have you seen this before?

18 A. Yes.

19 Q. You've seen it as part of Mr. Gammal's Facebook account,
20 right?

21 A. I think so.

22 Q. He uploaded this -- it was uploaded December of 30, 2013.

23 A. I don't know.

24 Q. Do you know whether this picture was provided to agents
25 from the FBI?

H1I3GAM4

McNulty - cross

1 MR. QUIGLEY: Objection, relevance.

2 THE COURT: Overruled.

3 A. What do you mean?

4 Q. Was this photograph provided to anybody involved in this
5 case, as far as you know?

6 A. I don't know.

7 Q. By Mohammed El-Goarany, for example?

8 A. I don't know.

9 Q. Okay. Attiya Aboualala was, from your review of his
10 Facebook account, Attiya fled Egypt to go to Istanbul, right?

11 A. I know he moved from Egypt to Istanbul.

12 Q. Well, do you know that demonstrators from Rabaa Square were
13 being persecuted after the massacre?

14 A. Yes.

15 Q. And they were being arrested, right, for their
16 participation in the protests?

17 A. I don't know.

18 Q. Okay. But you do know that Attiya Aboualala went to
19 Istanbul. Do you know when he went?

20 A. No.

21 Q. Okay. Have you reviewed an exchange between Attiya
22 Aboualala and Mr. Gammal regarding Mr. Aboualala's intention to
23 move to Turkey?

24 MR. QUIGLEY: May we approach?

25 THE COURT: You may.

H1I3GAM4

McNulty - cross

1 (At the sidebar)

2 MR. QUIGLEY: Your Honor, I would just renew our prior
3 objection. Number one, this is way outside the scope of his
4 direct. Number two, they questioned Agent Collie extensively
5 about many of these same issues. Agent Collie -- he's not
6 frankly a percipient witness. He's been in the FBI less than a
7 year. He's been on this case less than a year. He's frankly
8 primarily been in witness preps, and I think they're creating a
9 misimpression with the jury to say he was responsible or
10 involved in the precharge investigation of this case.

11 THE COURT: I don't know what his involvement has
12 been. That's certainly something you can clean up on redirect
13 examination.

14 MR. QUIGLEY: He testified that he had been only on
15 the case since spring of 2016.

16 THE COURT: I don't know what he's done since the
17 spring of 2016. That's a long time.

18 So again, Ms. Miron, I don't know what it is that you
19 want to do with this guy, but I'll allow the questioning to
20 proceed at this point. It appears as though, again, I'm not
21 going to say anything about what it appears, but you have the
22 representation from the government. Do what you think is
23 appropriate, but again, I will at some point I suppose begin to
24 sustain objections on the basis it is beyond the scope of
25 direct examination.

H1I3GAM4

McNulty - cross

1 MS. MIRON: Okay. To be clear, Agent Collie did
2 testify that there were rotating case agents and this case
3 agent was in the audience the whole trial.

4 MR. QUIGLEY: He's been outside in the hallway the
5 whole trial, because he's been sequestered.

6 THE COURT: I've seen him around but I don't think
7 he's been in the courtroom while the questioning has been going
8 on.

9 The fact that one agent has been questioned with
10 respect to a topic doesn't mean that other agents if they were
11 also involved could not be questioned about the same topic, so
12 that's not a basis for objection. If he wasn't involved then
13 he doesn't know, and he didn't review certain documents then he
14 can certainly say so.

15 MS. SHROFF: Also we reviewed your handwritten notes
16 of all the prep sessions, and he was at almost every one of the
17 prep sessions for Tarek El-Goarany.

18 THE COURT: That doesn't mean he has knowledge that
19 can be elicited at this trial. So you folks have a better
20 understanding of who was involved and what their involvement
21 was than I do. I'm not going to give a general instruction but
22 the objection is overruled.

23 MR. QUIGLEY: Thank you.

24 THE COURT: We'll take it a question at a time.

25 MR. HABIB: Can we square up redactions to this

H1I3GAM4

McNulty - cross

1 exhibit so our paralegal can prepare it. This is II, the one
2 the Court just ruled on. Attiya we're proposing to introduce
3 everything up to here. Cross out the part about he has nothing
4 to do with Daesh. And then introduce the statement about Samy,
5 "I asked Samy to record a video" and rest of it we can cross
6 out.

7 MR. QUIGLEY: Let me see the first page. Again, your
8 Honor, I think this is hearsay here and they have the date. It
9 is going to be unclear to the jury when he said "I asked Samy
10 to record a video."

11 MR. HABIB: The government put in these same articles
12 also by Attiya to Samy. To provide context to that exchange
13 we're just matching what the government put in.

14 MR. QUIGLEY: The first statement I don't care
15 about --

16 THE COURT: I don't know that this statement has come
17 in.

18 MR. HABIB: Which one?

19 THE COURT: The top one. I know it hasn't come in,
20 but I don't know whether the substance of that.

21 MR. HABIB: I mean, I take your Honor's point, but
22 with respect, I think this is necessary for the non-hearsay
23 purpose of making the document intelligible. It is the first
24 line in the communication. It sets the tone.

25 THE COURT: It's not in dispute.

H1I3GAM4

McNulty - cross

1 MR. QUIGLEY: You're taking out the "this is a huge
2 problem."

3 MR. HABIB: Sure. It will be up to here, the links.

4 MR. QUIGLEY: And the statement.

5 MR. HABIB: Yes.

6 (Continued on next page)

H1I3GAM4

McNulty - cross

(In open court)

BY MS. MIRON:

Q. Fair to say Attiya Aboualala and Mr. Gammal are Facebook friends, based on your review of the Facebook evidence, right?

A. Yes.

Q. And they had been friends at the time this profile photo was posted?

A. I don't know.

Q. I'd like to show you what's in evidence as Government Exhibit 120-A-T and direct your attention to page 37. All right. So this is a conversation between Attiya and Mr. Gammal, right?

A. Yes.

Q. And Attiya says "I will go to Jordan on the 5th." Right?

A. Correct.

Q. Mr. Gammal says "God be with you." Right?

A. Yes.

Q. Attiya says "I urge you by Allah to pray for me." Right?

A. Yes.

Q. Gammal says "May God give you success and ease your difficulty." Right?

A. Yes.

Q. And Attiya says "I reserved a flight on the 5th and will be in Istanbul the 8th or the 10th."

A. Okay, yes.

H1I3GAM4

McNulty - cross

1 Q. And so, based on your review of the Facebook evidence,
2 Attiya arrived or said he would arrive in Istanbul around the
3 8th or the 10th of September 2014.

4 A. Say that again?

5 Q. Sure. Based on your review of the Facebook evidence,
6 including this exhibit, did you review this exhibit before
7 today?

8 A. Yes.

9 Q. Okay. This is an exchange between Attiya and Mr. Gammal,
10 right?

11 A. Yes.

12 Q. Attiya is telling Mr. Gammal when he is to arrive in
13 Istanbul, when he, Attiya, is arriving in Istanbul, right?

14 A. Yes.

15 Q. And he is going to arrive September 8th or the 10th.

16 A. That's what he says.

17 Q. Okay. Based on your review of the Facebook evidence, did
18 Attiya Aboualala assist other supporters of Rabaa Square in
19 arriving in Istanbul?

20 MR. QUIGLEY: Objection.

21 THE COURT: Overruled.

22 A. I don't know.

23 Q. Or offered to assist?

24 A. I don't know.

25 Q. Or get solicitations to assist?

H1I3GAM4

McNulty - cross

1 To be clear, we're talking about people leaving Egypt,
2 okay, because they are supporters of Rabaa Square and being
3 persecuted and looking for a place to go.

4 Did Attiya Aboualala receive any solicitations, based
5 on your review, of help in arriving in Istanbul?

6 A. I don't recall.

7 Q. Okay.

8 MS. MIRON: Just a minute.

9 Q. You read an exchange regarding the video that Samy
10 El-Goarany produced. You read that to the jury, right?

11 A. Yes.

12 Q. And Attiya told Samy El-Goarany that he, Mr. Gammal, had
13 asked for that video. That's what essentially he purported to
14 say, right?

15 A. Yes.

16 MS. MIRON: I'd like to ask that Defense Exhibit
17 122-LL-II-T be admitted in a limited fashion.

18 MR. QUIGLEY: It's II, right?

19 MS. MIRON: II.

20 MR. QUIGLEY: No objection, your Honor.

21 THE COURT: That exhibit will be received.

22 (Defendant's Exhibit 122-LL-II-T received in evidence)

23 MS. MIRON: And that it be published to the jury.

24 THE COURT: Very well.

25 Q. Let me just situate us. The date on this exhibit is

H1I3GAM4

McNulty - cross

1 September 8th of 2015, right?

2 A. Yes.

3 Q. And that is, if not the day Samy posts the video, it's the
4 day after, right?

5 A. It's on or around that day, yes.

6 Q. Thank you. Attiya says "A brother" if you can just zoom in
7 a little maybe.

8 "A brother is detained in America and we still don't
9 know what they're going to do with him. We contacted a lawyer
10 and he still has to look into the case."

11 That's what he first says, right?

12 A. Yes.

13 Q. And he says "We may need to launch a campaign regarding his
14 arrest." Right?

15 A. Yes.

16 Q. And the person receiving this communication, Ahmed Ghanim,
17 asks "Who's that?" Right?

18 A. Yes.

19 Q. And he posts what looks like a link to Mr. Gammal's
20 Facebook account. Right?

21 A. Yes.

22 Q. He say "What does detained mean? Immigration?" Right?

23 A. Yes.

24 Q. And then there is a post to that same press release or
25 newspaper article, right?

H1I3GAM4

McNulty - cross

1 A. Yes.

2 Q. Okay. Let's just show the second page. Attiya says "I
3 asked Samy to record a video and say in it that he went to
4 Syria out of his own will." Right?

5 A. Yes.

6 Q. It's not that he says Mr. Gammal asked for the video to be
7 made. Right?

8 A. Correct.

9 Q. And in the exchange that you read between Attiya and Samy,
10 Attiya references Samy's father. In September of --

11 A. Yes.

12 Q. -- 2015, right?

13 A. Yes.

14 Q. And Attiya asks Samy's father essentially to drop the case;
15 something to that effect, right?

16 He says he wants Samy's father to not proceed.

17 A. Something to that effect, yes.

18 Q. This exchange follows from the May 2015 Mohammed El-Goarany
19 trip to Turkey, right?

20 A. Yes.

21 Q. So Mohammed El-Goarany had spoken with Attiya Aboualala by
22 this point. Correct?

23 A. Yes.

24 Q. And do you know the details of that investigation that
25 Mohammed El-Goarany did on his own?

H1I3GAM4

McNulty - redirect

1 A. No.

2 Q. You don't know exactly what was said between Attiya and
3 Mohammed, right?

4 A. No.

5 Q. You don't know because the FBI wasn't there.

6 A. I don't know.

7 Q. The FBI had no involvement in Mohammed El-Goarany's trip to
8 Turkey, right?

9 A. Correct.

10 Q. Thank you.

11 MS. MIRON: Nothing further.

12 THE COURT: Redirect?

13 MR. QUIGLEY: Just briefly, your Honor.

14 REDIRECT EXAMINATION

15 BY MR. QUIGLEY:

16 Q. Sir, just to pick up where Ms. Miron left off. Is it your
17 understanding that Mr. El-Goarany's trip to Turkey was not
18 authorized by the FBI?

19 A. Yes.

20 Q. Just briefly, when did you say you got on the case?

21 A. I started assisting with it in the March timeframe of 2016.

22 Q. Had the defendant been arrested by that point?

23 A. Yes.

24 MR. QUIGLEY: No further questions, your Honor.

25 MS. MIRON: Nothing further.

H1I3GAM4

1 THE COURT: Agent, you may step down.

2 THE WITNESS: Thank you, your Honor.

3 (Witness excused)

4 THE COURT: Government, please call your next witness.

5 MS. TEKEEI: Thank you, your Honor. We call Maria

6 Mascaro.

7 MR. QUIGLEY: With the Court's permission we can
8 publish a brief stipulation.

9 THE COURT: Very well.

10 MR. QUIGLEY: It is hereby stipulated and agreed
11 between the parties that:

12 If called to testify, a custodian of records from
13 Surespot LLC would testify as follows:

14 He or she is familiar with the record-keeping
15 practices of Surespot.

16 Surespot is a free secure mobile messaging
17 application, defined here as the Surespot app, that includes
18 text messages, images, and voice messages exchanged between
19 users of the application.

20 Surespot, which operates the Surespot app, cannot
21 view, decipher, or see the messages sent and received by
22 Surespot app users. This is because the Surespot app uses
23 end-to-end encryption technology with encryption keys that
24 Surespot itself cannot see and does not hold. The Surespot app
25 takes a user's text message, image, or voice messages, and

H1I3GAM4

1 locks them using this encryption technology. Only the Surespot
2 user who receives the text messages, images, or voice messages
3 will have the encryption key and be able to open the encrypted
4 text messages, images, or voice messages.

5 The Surespot app uses what is called a zero-content
6 system, which means that personal identifiable information of
7 its users and the contents of their communications are not
8 available. Surespot does not collect any personal information
9 about the users of the Surespot app. Surespot app accounts are
10 not associated with e-mail addresses or phone numbers.
11 Furthermore, if a user deletes his or her account, any messages
12 sent by that account would be deleted from Surespot's server
13 and would not appear in the record of any other Surespot
14 account.

15 Government's Exhibits 601 and 602 are true and
16 accurate copies of business records maintained by Surespot for
17 the accounts jimmy730 and samyelza. Defense Exhibit 202 is a
18 true and accurate copy of business records maintained by
19 Surespot from the account tarekel92. Defense Exhibit 203 is a
20 true and accurate copy maintained by Surespot for the account
21 AbMuradK. The information contained in Government Exhibits 601
22 and 602 and Defense Exhibits 202 and 203 were recorded at or
23 near of the time that the activity reflected therein took
24 place; was recorded by, or obtained from, persons with
25 knowledge of the activity reflected therein; was kept in the

H1I3GAM4

1 regular course of the business activity of Surespot; and is
2 relied on as a regular practice of Surespot.

3 Government's Exhibits 601 and 602 show that, on
4 December 1st, 2014, the account samyelza sent the account
5 jimmy730 a message. This was the 970th message exchange
6 between these two accounts. The message was received by the
7 server at 11:33 p.m. This is the only message that Surespot
8 retains on its server between those two accounts. It is not
9 possible to determine whether this message was viewed by the
10 account jimmy730. All 969 prior messages between the two
11 accounts were deleted. It is not possible to determine over
12 how many days the messages were exchanged between the two
13 accounts.

14 Government Exhibit 602 also shows that on February 4,
15 2015; February 18, 2015; March 29, 2015; and April 4, 2015,
16 Surespot user nohopeboy sent four messages to the samyelza
17 account.

18 Defense Exhibit 202 shows that on September 15, 2014,
19 the account tarekel92 sent samyelza a message, that the message
20 was received at 9:03 p.m., that this message was deleted from
21 samyelza's account, and there is no record of any other
22 messages exchange between these two accounts.

23 Defense Exhibit 203 shows that on September 25,
24 October 5 and October 9, 2015, the account AbMuradK sent
25 messages to abubakralsudani, and on July 16, 2015, the account

H1I3GAM4

1 AbMuradK sent two messages to the account tarekbey, and the
2 account tarekbey sent a message to the account AbMuradK, and
3 none of these messages were deleted from the account AbMuradK.
4 There is no record that the account AbMuradK exchanged messages
5 with the account jimmy730, and there is no record that either
6 account added the other as a friend.

7 It is further stipulated and agreed that this
8 stipulation, which is Government Exhibit 1106, along with
9 Government Exhibit 601 and 602 and Defense Exhibits 202 and
10 203, may be received into evidence at trial in the above
11 referenced trial.

12 So we'd offer the stip and 601 and 602.

13 THE COURT: On stipulation the exhibits will be
14 received.

15 MR. QUIGLEY: Thank you.

16 (Government's Exhibit 1106, 601, 602 received in
17 evidence)

18 THE COURT: Next witness, please.

19 MS. TEKEEI: Thank you, your Honor.

20 Maria Mascaro.

21 THE COURT: Please watch your step and when you step
22 into the witness box, please remain standing.

23 (Witness sworn)

24 THE COURT: You may be seated. Please pull your seat
25 up to the microphone and please begin by stating your full name

H1I3GAM4

Mascaro - direct

1 and spelling your last name for the record.

2 THE WITNESS: Maria Mascaro. M-A-S-C-A-R-O.

3 THE COURT: Ms. Tekeei.

4 MARIA MASCARO,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. TEKEEI:

9 Q. Ms. Mascaro, where do you work?

10 A. American Airlines at LaGuardia Airport.

11 Q. How long have you worked there?

12 A. 35 years.

13 Q. What is your position at American Airlines?

14 A. I am an auditor for the station.

15 Q. What are your day-to-day responsibilities?

16 A. I'm responsible to reconcile all the cash sales,
17 accountable documents, any type of revenue taken in the station
18 or revenue given to passengers.

19 Q. In the course of your work at American Airlines, have you
20 become familiar with the manner and methods in which American
21 Airlines maintains its records?

22 A. Yes.

23 MS. TEKEEI: Your Honor, may I approach?

24 THE COURT: You may.

25 Q. Showing you what's been marked for identification as

H1I3GAM4

Mascaro - direct

1 Government Exhibits 800, 807, and 808. Do you recognize those
2 documents?

3 A. Yes.

4 Q. Generally speaking, what are they?

5 A. The first one, 800, is a manifest of our flight, one of our
6 flights which includes all the passengers that were on board,
7 it includes the passenger name, seat numbers, origination and
8 destination of the flight.

9 Q. Generally speaking, what does 807 show?

10 A. 807 shows the actual flight number and schedule in arrival
11 of departure, and arrival of a particular flight between
12 certain cities.

13 Q. How about 808, just generally speaking.

14 A. 808 is the records of a passenger reservation from the
15 moment it was created with the history of every step from
16 check-in to boarding.

17 Q. Does American Airlines maintain these records in the
18 regular course of its business?

19 A. Yes.

20 Q. Is it the regular practice of American Airlines to maintain
21 these records?

22 A. Yes.

23 Q. Are these records generated at or near the time of the
24 events they reflect therein?

25 A. Yes.

H1I3GAM4

Mascaro - direct

1 MS. TEKEEI: Your Honor, we offer Government Exhibits
2 800, 807 and 808.

3 MS. SHROFF: No objection.

4 THE COURT: Those documents will be received.

5 (Government's Exhibit 800, 807, 808 received in
6 evidence)

7 MS. TEKEEI: Thank you. May we publish 808?

8 THE COURT: You may.

9 MS. TEKEEI: Thank you.

10 Q. Ms. Mascaro, looking at page one of 808, can you describe
11 for the jury what types of records these are.

12 A. This is a reservation made for a passenger El Gammal,
13 Ahmed, it was made through the website, it includes his phone
14 number. At the time it was USAirways.com, which it was
15 previously U.S. Airways, we just merged with American Airlines.
16 It includes the e-mail, there is a ticket number, a fare, the
17 amount it was paid for, it indicates the credit card number,
18 the date of purchase.

19 Q. What is that date of purchase?

20 A. Date of purchase was September 20.

21 Q. Turning to page two, six lines down beginning with the line
22 that starts with web SU.

23 A. All the way down?

24 Q. I misspoke.

25 A. I'm sorry. Yes.

H1I3GAM4

Mascaro - direct

1 Q. What time was this fare purchased?

2 A. 6:47.

3 Q. Thank you. You can put that one to the side.

4 Looking at Government Exhibit 800. I believe earlier
5 you said this was the flight manifest. Is that correct?

6 A. Correct.

7 Q. What is the flight number? To what flight does this
8 manifest relate?

9 A. Flight 425 from Phoenix to J.F.K. on October 6, 2014.

10 Q. To be clear, this is a list of passengers who were on the
11 flights that are reflected in this exhibit?

12 A. That's correct.

13 Q. Looking approximately midway down the first page, there is
14 a passenger listed in seat 31D. Who is that passenger?

15 A. El Gammal, Ahmed.

16 Q. Is that the same passenger for whom we saw the reservation
17 in Government Exhibit 808?

18 A. Yes.

19 Q. You may put that to the side. Thank you.

20 Then looking at Government Exhibit 807, are these
21 flight details for that same flight we were just talking about,
22 Flight 425 from Phoenix to J.F.K. on October 6?

23 A. Correct. Actually shows the schedule time of departure and
24 the actual time of departure.

25 Q. What is the actual departure time?

H1I3GAM4

Mascaro - cross

1 A. 8:56 Phoenix time.

2 Q. What is the actual arrival time at J.F.K.?

3 A. 1657, which is 4:57 New York time.

4 MS. TEKEEI: No further questions, your Honor.

5 THE COURT: Any cross?

6 CROSS-EXAMINATION

7 BY MS. SHROFF:

8 Q. Good afternoon, ma'am.

9 A. Hi.

10 Q. Could I have 808 put up, please.

11 May I ask was this ticket was paid for by cash or by
12 credit card?

13 A. Credit card.

14 Q. What credit card did the person use, ma'am?

15 A. It doesn't -- I'm sorry. It says American Express.

16 Q. Could you just focus on the address. And the name of the
17 person traveling is El Gammal, correct?

18 A. Correct.

19 Q. If you take a look, please, further down, oh, right there.
20 There you go.

21 It says cardholder, correct?

22 A. Correct.

23 Q. Ahmed M. El Gammal?

24 A. Correct.

25 Q. And cardholder's address is given over there, correct?

H1I3GAM4

Mascaro - cross

1 A. Correct.

2 Q. Could you just read that out loud for me.

3 A. 3800 North El Mirage Road, Avondale, Arizona 85392 U.S.A.

4 Q. From this you would conclude, would you not, that the
5 person who bought this ticket bought it by a credit card,
6 right? Not cash. Credit card.

7 A. Correct.

8 Q. Gave your airline his accurate address, that was put into
9 the computer, correct?

10 A. He typed that address.

11 Q. Right. But it's in your computer system, correct?

12 A. Correct.

13 Q. And he then purchased the ticket based on the information
14 provided to the airline, correct?

15 A. Correct.

16 Q. And he booked it, correct, for a particular day?

17 A. Yes.

18 Q. Traveled on the particular day, right?

19 A. Correct.

20 Q. Didn't change it three times, correct?

21 A. No. It didn't say he changed it three times.

22 Q. Not at all, right? He booked it, right?

23 A. Correct.

24 Q. Okay.

25 MS. SHROFF: I actually don't have any further

H1I3GAM4

Mascaro - cross

1 questions. Thank you.

2 THE COURT: Very well. Redirect?

3 MS. TEKEEI: No questions, your Honor. Thank you.

4 THE COURT: Ms. Mascaro, you may step down.

5 (Witness excused)

6 THE COURT: Does the government want to call its next
7 witness.

8 MS. TEKEEI: Yes. The government calls Teresa
9 El-Goarany.

10 THE COURT: If members of the jury want to stand up
11 and stretch in between witnesses, please feel free to do so.

12 Miss, please step up into the witness box and please
13 remain standing.

14 (Witness sworn)

15 THE COURT: Please sit down, pull your seat up to the
16 microphone. And please begin by stating your full name and
17 spelling your last name for the record.

18 THE WITNESS: My name is Maria Teresa El-Goarany.
19 M-A-R-I-A T-E-R-E-S-A E-L-G-O-A-R-A-N-Y.

20 THE COURT: Thank you. Ms. Tekeei.

21 MS. TEKEEI: Thank you.

22 MARIA TERESA EL-GOARANY,

23 called as a witness by the Government,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

H1I3GAM4

M.T. El-Goarany - direct

1 BY MS. TEKEEI:

2 Q. Mrs. El-Goarany, where were you born?

3 A. I was born in Colombia.

4 Q. Where did you grow up?

5 A. I grew up in Colombia.

6 Q. What schools did you attend?

7 A. I attended Catholic school, and then I moved to high school
8 and college.

9 Q. When did you come to the United States?

10 A. I came to the United States in the late '70s, beginning of
11 the '80s.

12 Q. Where do you work now?

13 A. I work now for a foundation. That -- I work with
14 immigrants and migrants at the same time. So the immigrants
15 and migrants in this country.

16 Q. Are you married?

17 A. Yes, I am.

18 Q. To whom?

19 A. To Mohammed El-Goarany.

20 Q. Without giving us the exact address, where do you live now?

21 A. I live upstate New York.

22 Q. Have you and Mr. El-Goarany ever had children?

23 A. Yes, we have two children.

24 Q. Who are they?

25 A. Samy, S-A-M-Y, and Tarek, T-A-R-E-K.

H1I3GAM4

M.T. El-Goarany - direct

1 Q. Directing your attention to the fall of 2014. How often
2 did you see your son Samy during that time period?

3 A. I see Samy every weekend and every time that I had a day
4 off.

5 MS. TEKEEI: Your Honor, may I approach?

6 THE COURT: You may.

7 Q. I'm showing you what's been previously marked for
8 identification as Government Exhibits 1009 and 1010. If you
9 can just take a moment and look at them.

10 Mrs. El-Goarany, do you recognize those documents?

11 A. Yes, I do.

12 Q. Generally speaking, what are they?

13 A. They are copies or pictures that I took from papers that I
14 found in the backpack of my son Samy.

15 Q. When did you find the documents that are in the pictures
16 Government Exhibits 1009 and 1010?

17 A. I found them when I was cleaning his apartment.

18 Q. Approximately when was that?

19 A. That was in November, middle to end of November 2014.

20 MS. TEKEEI: Your Honor, the government offers
21 Government Exhibits 1009 and 1010.

22 MS. SHROFF: We have no objection, your Honor.

23 THE COURT: Those exhibits will be received.

24 (Government's Exhibit 1009, 1010 received in evidence)

25 Q. What, if anything else, did you find in your son Samy's

H1I3GAM4

M.T. El-Goarany - direct

1 backpack after finding what's in Government Exhibit 1009 and
2 1010?

3 A. I found a gift wrapped gift, and when I felt it, it felt
4 like it was a book.

5 MS. TEKEEI: Your Honor, may we publish Government
6 Exhibit 1009.

7 THE COURT: Yes.

8 MS. TEKEEI: Thank you.

9 Q. Mrs. El-Goarany, looking at this document, what is it?

10 A. This is a receipt of --

11 THE COURT: I'm sorry, Mrs. El-Goarany, can you speak
12 directly into the microphone.

13 THE WITNESS: Sure, I'm sorry.

14 A. This is a receipt of hotel in Turkey.

15 Q. Are the dates on that receipt, do they show November 25,
16 2014 to November 26, 2014?

17 A. Yes.

18 MS. TEKEEI: And setting that to the side for a
19 minute, your Honor, may we publish Government Exhibit 1009 --
20 I'm sorry 1010.

21 THE COURT: Yes, you may.

22 Q. This is another -- this is a note that you found in Samy's
23 backpack in mid November -- I'm sorry. In November of 2014?

24 A. Yes. I'm sorry. This is another one that I found on that
25 time. And it has a name with a number, a contact number. And

H1I3GAM4

M.T. El-Goarany - direct

1 it has some words in Arabic and a translation in English.

2 Q. Thank you, Mrs. El-Goarany. What, if anything, did you do
3 after finding these materials inside of Samy's backpack?

4 A. After that, I ask my son what was that about.

5 Q. Approximately when did you ask your son Samy what these
6 materials were about?

7 A. I think it was after a few days when I saw him again.

8 Q. How did he react?

9 A. He was surprised, he said, mom, you shouldn't go through my
10 backpack.

11 Q. What, if anything, did he say about what he had intended to
12 do?

13 A. He said he didn't tell me because he was afraid that
14 something might happen to me.

15 Q. Describe what he told you about his plans for travel.

16 A. He told me that he was -- he wanted to go to Turkey to help
17 the Syrian refugees and to work in a tent passing supplies to
18 them.

19 Q. After this conversation, what, if anything, did he say
20 about whether he still intended to travel?

21 A. He said, mom, don't worry. I'm not going to go. I decided
22 not to go again, and I'm going to focus in finishing my career,
23 and he sign up for his courses and he showed me when he signed
24 up for those courses.

25 Q. What, if anything, did he ask you to do?

H1I3GAM4

M.T. El-Goarany - direct

1 A. He asked me not to tell anything to his father.

2 Q. Did you follow those -- that wish?

3 A. Yes, I did. I didn't tell him anything. I trusted my son.

4 Q. When was the last time you saw Samy in person?

5 A. The last time I saw him was in January, end of
6 January 2015.

7 Q. In front of you are what have been previously marked for
8 identification as Government Exhibits 1017 and 1018. Do you
9 recognize those?

10 A. Yes, I recognize them. The first one here is a note.
11 There's two notes in here. And one said "one God" and the
12 other one says "one God, one path."

13 Q. Do you recognize the handwriting?

14 A. Yes.

15 Q. Whose handwriting is that?

16 A. This is Samy's handwriting.

17 MS. TEKEEI: Your Honor, we offer Government Exhibits
18 1017 and 1018.

19 MS. SHROFF: May I just have a very brief voir dire.

20 THE COURT: Yes.

21 BY MS. SHROFF:

22 A. Hello.

23 Q. Hi. Can you tell me, please, when you found what is marked
24 as 1017?

25 A. I don't remember exactly when. But I remember where I

H1I3GAM4

M.T. El-Goarany - direct

1 found it.

2 Q. Do you remember exactly when you gave it to Ms. Tekeei?

3 A. I'm sorry, can you repeat your question?

4 Q. Sure. After you found them, you gave them to Ms. Tekeei,
5 right? You know her as Negar.

6 A. Oh, yes, of course.

7 Q. You gave them to her, correct?

8 A. I gave her, yes, I did.

9 Q. And you gave her, let's just stay with 1017 first.

10 A. Okay.

11 Q. You gave it to her how close to when you found it?

12 A. It was recently because -- yeah, it was recently. I'm
13 sorry.

14 Q. That's okay. When? Like recently when, last week?

15 A. I would say two weeks maybe.

16 Q. Two weeks ago?

17 A. I don't remember exactly, yes.

18 Q. The moment you found them you gave them to her?

19 A. The moment I found them?

20 Q. Who did you give them to?

21 A. Oh, to Negar. Yeah.

22 Q. Okay. And how about 1018. Did you also find it two weeks
23 ago?

24 A. Let me take a look, please.

25 MS. TEKEEI: Objection, your Honor. That

H1I3GAM4

M.T. El-Goarany - direct

1 mischaracterizes the witness's testimony about when she found
2 those notes. She's discussing when she handed them to us, but
3 not when she found them.

4 THE COURT: Overruled. The jury will recall what the
5 testimony was.

6 A. This is the same note. Yeah.

7 Q. About the same time?

8 A. Yeah.

9 MS. SHROFF: Thank you.

10 THE WITNESS: You're welcome.

11 BY MS. TEKEEI:

12 Q. Mrs. El-Goarany, when did you first find the notes that are
13 marked as 1017 and 1018, approximately?

14 A. I found these notes when Samy left, in around the time when
15 he left. It might be three days or a week, but it was on the
16 time when he left.

17 Q. Where did you find them?

18 A. I found these notes on his desk.

19 MS. TEKEEI: Your Honor, again we offer 1017 and 1018.

20 MS. SHROFF: No objection.

21 THE COURT: 1017 and 18 will be received.

22 (Government's Exhibit 1017, 1018 received in evidence)

23 MS. TEKEEI: Thank you, your Honor. May we publish
24 them to the jury?

25 THE COURT: You may.

H1I3GAM4

M.T. El-Goarany - cross

1 MS. TEKEEI: Thank you, Ms. Quinones.

2 Q. Mrs. El-Goarany, when was the last time you received a
3 communication from Samy?

4 A. I heard from Samy, the last time I heard from Samy was on
5 October, end of October 2015.

6 MS. TEKEEI: Thank you. No further questions at this
7 time.

8 THE COURT: Any cross-examination?

9 CROSS-EXAMINATION

10 BY MS. SHROFF:

11 Q. Good afternoon, Mrs. El-Goarany.

12 A. Good afternoon.

13 Q. Mrs. El-Goarany, you testified that you found certain
14 documents, a total of four, you found all four in Samy's Rego
15 Park -- Samy and Tarek's Rego Park apartment, correct?

16 A. No.

17 (Continued on next page)

Hli5gam5

M.T. El-Goarany - cross

1 BY MS. SHROFF:

2 Q. Okay.

3 So, let's just go through the first one. Could you
4 please put up the one with Attiya's phone number? Let's start
5 with this one, okay? Where did you find this document?

6 A. I found this note in his backpack.

7 Q. And the backpack was where? I'm sorry.

8 Where was the backpack?

9 A. Oh, the backpack was on the floor. I was cleaning the
10 apartment and the backpack was partially open so the papers
11 were coming out from his backpack, yes.

12 Q. And which apartment was that?

13 A. The apartment where he was living with his brother in Rego
14 Park Queens.

15 Q. Okay.

16 And you testified on direct that this was around
17 November, correct?

18 A. Yes.

19 Q. And you saw that there was, you read what you found,
20 correct?

21 A. Yes.

22 Q. And you read that there was a name on the top, correct?

23 A. Correct.

24 Q. And then there was a phone number underneath, correct?

25 A. Correct.

Hli5gam5

M.T. El-Goarany - cross

1 Q. And you testified also on direct that you had a
2 conversation about this document and other things with Samy,
3 correct?

4 A. I had a conversation with Samy about these papers.

5 Q. And did you ask him who that person was?

6 A. I asked him general what was that about.

7 Q. Okay.

8 But you didn't ask -- you didn't show him that name
9 and number and say who is that person?

10 A. I didn't ask him at that time. I don't remember asking
11 that.

12 Q. Okay.

13 And below that is written: Relax. And then there is
14 the counterpart Arabic word, correct? Take it easy, correct?
15 And then there is another third thing written down below,
16 correct?

17 A. Correct.

18 Q. And you didn't ask Samy specifically about this but you had
19 a general conversation with him about the other things you also
20 found in his backpack, correct?

21 A. I, in general, asked him what was that about, all these
22 papers about.

23 Q. And Samy told you what that was about, correct?

24 A. Samy told me, in general, that he wanted to go to Turkey
25 and that's why he had those papers in his backpack.

Hli5gam5

M.T. El-Goarany - cross

1 Q. And what did he tell you about working in a tent? Could
2 you remind me, please?

3 A. He told me that he was -- the reason why he was going to
4 Turkey was because he was going to do humanitarian work and he
5 was going to be helping the refugees near the border to --
6 working in a tent to help passing supplies to them.

7 Q. And you had a conversation with him because you didn't want
8 him to go, correct? That is fair to say?

9 A. Well, we -- we had a conversation about the papers and
10 that's the reason he said to me for the papers that I found.

11 Q. Okay.

12 Do you recall, by any chance, how long the
13 conversation was?

14 A. I don't.

15 Q. And do you recall if your other son Tarek was there at that
16 time? Or no.

17 A. I don't remember.

18 Q. Okay.

19 And after this conversation, Samy came and told you
20 that he wasn't going to go on this trip, correct?

21 A. The same time that I asked him, he said, mom, don't worry.
22 I'm not going to Turkey. I'm not going to go. I'm just going
23 to focus on my studies and finishing my career.

24 Q. And it's fair to say that is in fact what Samy did, right?
25 He focused on his studies, correct?

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M.T. El-Goarany - cross

1 A. He showed me, yes, that he signed up for his courses.

2 Q. And, in fact, he updated his resume around that same time,
3 correct, looking for a job?

4 A. He updated his resume because, yes, he was looking for a
5 job at the same time.

6 Q. And you also testified about another document that was --
7 that says one God, correct? Could I please have that up?

8 You found this document at about the same time but you
9 recently gave it to the prosecutor, correct?

10 A. I found that document, yes, but not in the same place.

11 Q. Okay.

12 And one God means something to you? Would the phrase
13 mean something to you?

14 A. Well, that's what we always say in the religion, yes, when
15 we pray. There is one God, yes.

16 Q. A normal phrase, right?

17 A. Yes.

18 Q. And the same thing for the second piece of paper, correct?

19 A. That is what he wrote, one path.

20 Q. Right.

21 A. I don't know what he meant by that.

22 Q. Okay.

23 And, is it fair to say, Mrs. El Goarany, that you
24 don't know when Samy wrote this piece of paper that says one
25 God, correct?

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M.T. El-Goarany - cross

1 A. I don't know when he wrote it.

2 Q. Right.

3 And you also don't know when he wrote one God, one
4 path, correct?

5 A. I don't know.

6 Q. Could I just have a second, your Honor?

7 THE COURT: Sure.

8 (counsel conferring)

9 Q. Ms. El Goarany, you testified that you did not discuss
10 these things that you found with your husband, correct?

11 A. I said to Samy I was not going to let my husband know and I
12 didn't.

13 Q. Okay.

14 And did you discuss all of these things with Tarek
15 because Tarek was there when this conversation was happening
16 between you and Samy?

17 A. I don't remember that if Tarek was there, but, no, I
18 didn't.

19 Q. Okay.

20 And you testified, right, that the document -- not
21 these two but the first one that has the phone number on it, do
22 you recall when you first gave it and to whom? Do you recall
23 giving it to the FBI, by any chance?

24 A. Yes. I remember giving it to the FBI.

25 Q. Right.

Hli5gam5

M.T. El-Goarany - redirect

1 And you gave that to the FBI fairly early on, correct?

2 A. I'm sorry?

3 Q. You gave that to the FBI fairly early on, right? Early on
4 meaning not this year or last year, correct?

5 A. I gave them -- I gave those papers to them early, yes.

6 Q. Right.

7 And did you also at that time give those papers to
8 your husband?

9 A. I remember -- let me just remember, it was such a long
10 time.

11 After I gave the papers to the FBI and after my
12 husband knew when we were with the FBI in the same room, then
13 we spoke about it.

14 Q. Right.

15 So you were there with your husband and the FBI and
16 you gave the FBI this piece of paper that had the phone number
17 on it and your husband was present for that, correct?

18 A. Correct.

19 MS. SHROFF: I have nothing further, your Honor.
20 Thank you.

21 MS. TEKEEI: A few questions, your Honor.

22 REDIRECT EXAMINATION

23 BY MS. TEKEEI:

24 Q. Mrs. El Goarany, I just want to be totally clear.

25 Ms. Shroff asked you some questions about Government's Exhibits

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M.T. El-Goarany - redirect

1 1009 and 1010. Can you just take a moment and pull those out?

2 Ms. Quinones, can you please publish them?

3 You testified that these are pictures of documents
4 that you found in Samy's backpack; is that correct?

5 A. Correct.

6 Q. Did you keep the actual pieces of paper after you took the
7 pictures of the documents?

8 A. No, I didn't.

9 Q. Where did you put the pieces of paper that are reflected in
10 these pictures?

11 A. I put them back in the same place.

12 Q. And approximately when did you find the pieces of paper
13 that are reflected in these pictures?

14 A. Can you repeat your question?

15 Q. Sure.

16 The papers that are reflected in these pictures,
17 approximately when did you first find them in Samy's backpack?

18 A. Around November. Middle of November to end of November.

19 Q. What year was that?

20 A. 2014.

21 Q. And, am I correct that after you took the pictures you put
22 the papers back in his backpack; is that right?

23 A. Yes.

24 Q. And so, then in February of 2015, when you met with the
25 FBI, what did you provide them; the pictures or papers?

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M.T. EL-Goarany - recross

1 A. The pictures.

2 Q. And just to be abundantly clear, looking at Government
3 Exhibit 1017 and 1018, one more time, approximately when did
4 you find these documents?

5 A. That was when, approximately, after a week when he left in
6 January 2015.

7 Q. So, just to be clear, you found those after your son Samy
8 had already left; is that right?

9 A. Yes. He left already, yes.

10 Q. And then, finally, had your son Samy ever received any
11 medical training?

12 A. Any? I'm sorry?

13 Q. Medical training.

14 A. Medical?

15 Q. Yes, ma'am; medical training as a physician or staff at a
16 hospital?

17 MS. SHROFF: Objection.

18 A. No.

19 MS. TEKEEI: Thank you. No further questions.

20 MS. SHROFF: May I, your Honor?

21 THE COURT: Yes.

22 RECROSS EXAMINATION

23 BY MS. SHROFF:

24 Q. Ms. El Goarany, I just want to be clear. You gave the FBI,
25 in whatever form, paper, photo, the first time you met the FBI

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1 you gave them the information that's contained including the
2 name and the phone number, correct?

3 A. Yes, I did. I took those pictures and I gave -- I sent
4 those pictures to the agent.

5 Q. Right.

6 And you recall Ms. Tekeei asking you if Samy had any
7 medical training, correct?

8 A. Medical training?

9 Q. Right.

10 A. No.

11 Q. Right.

12 Samy's interest was basically in humanitarian work,
13 correct?

14 A. He was interested, yes.

15 Q. In humanitarian work?

16 A. In humanitarian work, yes.

17 Q. And, in fact, when he talked to you about this conversation
18 that you had, what he was telling you is that his desire to go
19 to Turkey was to do humanitarian, not medical work, correct?

20 A. Humanitarian.

21 MS. SHROFF: Thank you. Nothing further.

22 MS. TEKEEI: No further questions, your Honor.

23 THE COURT: Mrs. El Goarany, you may step down.

24 (Witness excused)

25 THE COURT: Government, please call your next witness.

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MS. TEKEEI: Thank you, your Honor.

With the Court's permission, we would like to publish to the jury a portion of 120-A-T and publish it by reading it.

THE COURT: Very well.

MS. TEKEEI: Thank you.

If the jury would like to follow along, again, it is Exhibit 120-A-T in the jury binders beginning at page 49.

MR. DEFILIPPIS: Starting with the top message on May 3rd, 2015, at 9:29 -- excuse me, 9:21:29, I will read the role of the defendant and Ms. Tekeei will read the role of Attiya Aboualala:

"EL-GAMMAL: Check their videos and channel and ask them. Have you seen the new harvest of the spies?

"ATTIYA: Send links.

MS. TEKEEI: Starting at May 4th, 2015, at 15:0. the messages between Attiya and the defendant:

"ATTIYA: Hey, Gammal. Call me quickly. Urgent. The father of Samy is asking about."

MR. DEFILIPPIS: Question marks.

MS. TEKEEI: Call.

"ATTIYA: Hey Gammal.

"EL-GAMMAL: Speak up Attiya. What's going on.

"ATTIYA: His father called me and is asking me about him. I told him I don't know anything about him.

"EL-GAMMAL: How does he know you and how did he get

Hli5gam5

1 your number?

2 "ATTIYA: Samy has previously told him that he
3 communicated with me through you only. He got my number from
4 Abdallah Al Jazzar, a news anchor at the El Sharq Channel.

5 "EL-GAMMAL: And from where does he know Al Jazzar?

6 "ATTIYA: Tell me what I should tell him. I don't
7 know.

8 "EL-GAMMAL: Next time, don't answer. And don't ever,
9 ever mention me. Not even my name.

10 "ATTIYA: Okay. He wants me to met him."

11 MR. DEFILIPPIS: Call. Missed call. Followed by
12 another missed call.

13 "ATTIYA: The net is very slow.

14 "EL-GAMMAL: Meet who? I don't understand.

15 "ATTIYA: It will not permit me to finish the call.
16 His father. Here in Istanbul.

17 "EL-GAMMAL: Who wants to meet you?

18 "ATTIYA: I will get rid of him by telling that I
19 don't know anything about him since January and that I did not
20 communicate with him at all since January, and he was a friend
21 on Facebook, a Muslim of Egyptian decent who said that he is
22 coming to Istanbul and I wanted to help him. Afterwards, I had
23 no more communications with him.

24 "EL-GAMMAL: Exactly, and don't ever, ever mention me
25 or my name.

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1 "ATTIYA: Fine, but Samy's brother told his father
2 that you know me. Anyways, I will tell him that I do not know
3 you.

4 "EL-GAMMAL: Did he ask about me?

5 "ATTIYA: Yes. He mentioned your Facebook name, the
6 one you use on Facebook.

7 "EL-GAMMAL: Because we are friends on Facebook.

8 "ATTIYA: I will meet him and inform you about the
9 results of the meeting.

10 "EL-GAMMAL: You are a mutual [mutual Facebook friend]
11 of me and him.

12 "ATTIYA: Maybe it is because of this.

13 "EL-GAMMAL: You don't have to meet him.

14 "ATTIYA: It's okay. Don't worry. No, because I do
15 not want him to have strange thoughts.

16 "EL-GAMMAL: Okay.

17 "ATTIYA: Perfect. I erased the friendship so he
18 would not know that I know you."

19 MR. DEFILIPPIS: Entry reflecting a missed call.

20 "ATTIYA: On the net I have a Facebook and Twitter
21 package only, and that's why there could be a problem in
22 communication.

23 "EL-GAMMAL: Call me on tango.

24 "ATTIYA: Anyways, I covered up for you and I told him
25 that I don't know you and my relationship was direct with Samy.

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1 He spoke to me and said that he wanted to visit Istanbul. I
2 met him for one day and then I didn't know anything about him
3 afterwards. I do not have Internet, I have a package to surf
4 Facebook and Twitter only.

5 "EL-GAMMAL: Okay.

6 "ATTIYA: The guy is a military and he tells me how
7 Samy used to tell him that the Army is fooling him and that the
8 Egyptian Army is against Islam.

9 "EL-GAMMAL: I am surprised that he traveled to
10 Turkey. Yeah, Samy told me that he is an adamant supporter of
11 militarism from a military family.

12 "ATTIYA: Yes, but I debated with him and he did not
13 know how to answer me. He told me that Al Sisi made an
14 achievement with the Suez Canal.

15 "EL-GAMMAL: It seems that he found him in Turkey
16 because Samy has just posted. Ha ha ha ha ha. He achieved
17 what Canal? Ha ha ha ha ha.

18 "ATTIYA: I don't know if he didn't know how to
19 respond or if he just didn't want to anger me because he
20 expects from me to convey to him any information I lay my hand
21 on about his son. Samy wrote a post.

22 "EL-GAMMAL: Yeah. I saw it in the news feed."

23 MS. TEKEEI: Thumbs up sticker.

24 "EL-GAMMAL: But you don't ever get in contact with
25 him. Inbox.

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1 "ATTIYA: Why?

2 "EL-GAMMAL: Maybe his father is using his account.

3 "ATTIYA: Yeah. Okay."

4 MS. TEKEEI: Link to a YouTube.

5 "EL-GAMMAL: Okay. Did you take his permission before
6 you published it?

7 "ATTIYA: The man is very glad and happy with his son.
8 Ha ha ha ha ha.

9 "EL-GAMMAL: I don't understand. Does he agree that
10 you publish?

11 "ATTIYA: He is happy about the spirit with which Samy
12 is talking to him.

13 "EL-GAMMAL: Elaborate. I don't understand. Did Samy
14 call?

15 "ATTIYA: Samy called him yesterday and he was happy.
16 He said for the first time, I feel my son is a man.

17 "EL-GAMMAL: He is in Turkey or did he go back?

18 "ATTIYA: Not yet. He is going to Egypt tomorrow.

19 "EL-GAMMAL: And how did he reach Samy?

20 "ATTIYA: Samy called him yesterday on WhatsApp.

21 "EL-GAMMAL: Good. Thank God. Truly in the video, he
22 seems reassured and happy. He sent me an add. Can you imagine
23 that? And frankly, Samy is a true, true, true man and noble.

24 "ATTIYA: Accept and don't worry.

25 "EL-GAMMAL: I accepted it a long time ago. But I

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1 found it strange. I have been with his son for six years and
2 he never added me. Can you call me?

3 "ATTIYA: There is no sound.

4 "EL-GAMMAL: The heck. So he is going to travel to
5 Egypt and then come back?

6 "ATTIYA: Honestly, I don't know.

7 "EL-GAMMAL: I don't know how did he get to you, he is
8 a very smart man.

9 "ATTIYA: From Facebook he checked who are Samy's
10 friends and he got into me.

11 "EL-GAMMAL: And what do you mean he got into you?
12 Speak Arabic, Attiya. Ha ha ha.

13 "ATTIYA: He logged into my profile and spoke to
14 someone who was with me in the picture.

15 "EL-GAMMAL: And why didn't he talk to you directly?
16 Why did he talk to the other guy in the picture?

17 "ATTIYA: I don't know.

18 "EL-GAMMAL: Was he afraid of you by any chance?

19 "ATTIYA: Maybe.

20 "EL-GAMMAL: Ha ha ha ha ha. And who is that friend?

21 "ATTIYA: But he made a lot of supplications for me.
22 He thought I was the one who got him in contact with his son.

23 "EL-GAMMAL: What is his name? Then who? Didn't Samy
24 get a Turkish phone number?

25 "ATTIYA: But he is in the Levant now.

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1 "EL-GAMMAL: So how did he get in contact with him?

2 "ATTIYA: LK HGTDS. On Face.

3 "EL-GAMMAL: Most importantly is how he is doing and
4 his morale, the father.

5 "ATTIYA: Very high.

6 "EL-GAMMAL: Praise be to Allah. Although he is a
7 Sisi supporter. Okay, no problem. Sorry for annoying you,
8 Attiya. May God keep you safe and grant you success.

9 "ATTIYA: My God, buddy. What annoyance are you
10 talking about?

11 "EL-GAMMAL: All this matter. I heard you are going
12 to start a channel, the channel of the revolution.

13 "ATTIYA: Ha ha ha ha ha."

14 THE COURT: Are you between?

15 MR. DEFILIPPIS: Your Honor, the witness is ready.
16 Before he takes the stand we are just going to read a brief
17 stipulation.

18 THE COURT: Read the stipulation and then we will take
19 a break.

20 MR. DEFILIPPIS: Perfect, your Honor.

21 The stipulation marked Government Exhibit 1109 reads,
22 in relevant part:

23 Government Exhibit 145-T contains true and accurate
24 Arabic to English and Turkish to English translations of the
25 video which is contained in Government Exhibit 145. The

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1 parties further stipulate and agree that Government Exhibit
2 145, Government Exhibit 145-T, and this stipulation, may be
3 received into evidence as government exhibits at trial.

4 Your Honor, the government offers Government Exhibit
5 145, 145-T, and Government Exhibit 1109.

6 THE COURT: Those exhibits will be received on
7 stipulation.

8 MR. DEFILIPPIS: And we will publish them during the
9 testimony.

10 THE COURT: Very well.

11 Ladies and gentlemen, let's take our afternoon break.
12 Let's see if you were paying attention, we will come back at
13 15:07 Zulu.

14 (Continued on next page)

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(Jury not present)

THE COURT: Anything for me?

MR. DEFILIPPIS: Your Honor, we just wanted to let your Honor and defense know that our next witness is Mohammed El Goarany.

THE COURT: Very well. Okay.

MS. SHROFF: Your Honor, can we just have one minute? It doesn't -- a couple minutes ex parte with the Court?

THE COURT: Sure.

MS. SHROFF: Thanks.

(Discussion off the record at side bar).

(Recess)

THE COURT: It appears as though we are going to go a couple minutes over. I have instructed Ms. Rivera to let the jury know that we are discussing legal issues that the jury need not concern itself with.

(Pause)

(Continued on next page)

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M. El-Goarany - direct

1 (Jury present)

2 THE COURT: Everyone, please, be seated.

3 Will the government call its next witness?

4 MR. DEFILIPPIS: Yes, your Honor.

5 The government calls Mohammed El Goarany.

6 THE COURT: Sir, please step into the witness stand
7 and remain standing.

8 MOHAMMED EL-GOARANY,

9 called as a witness by the Government,

10 having been duly sworn, testified as follows:

11 THE COURT: Please begin, sir, by stating your full
12 name and spelling your last name for the record.

13 THE WITNESS: My full name is Mohammed El Goarany. My
14 last name is E-L G-O-A-R-A-N-Y.

15 DIRECT EXAMINATION

16 BY MR. DEFILIPPIS:

17 Q. Good afternoon, Mr. El- Goarany.

18 A. Good afternoon, sir.

19 Q. Are you familiar with an individual Samy El- Goarany?

20 A. He's my son.

21 Q. And where is he today?

22 A. He's been killed.

23 Q. Approximately when did your son pass away?

24 A. November 2015.

25 Q. Mr. El- Goarany, we will come back to that topic but let me

Hli5gam5

M. El-Goarany - direct

1 ask you, where were you born?

2 A. Alexandria, Egypt.

3 Q. Mr. El- Goarany, what was your line of work in Egypt?

4 A. I'm an engineer -- officer engineer in the Egyptian Army
5 and Navy.

6 Q. Do you currently reside in the United States?

7 A. Yes.

8 Q. When did you come to the United States?

9 A. 1988.

10 Q. Since coming to the U.S., what has been your main line of
11 work here?

12 A. Real estate. Self-employed real estate.

13 Q. You said real estate?

14 A. Real estate broker.

15 Q. And is that what you do today for work?

16 A. Yes.

17 Q. Mr. El- Goarany, have you ever been convicted of a crime?

18 A. Yes. Once.

19 Q. And what specific offense were you convicted of?

20 A. With kickback for racketeering in a co-op business in
21 Queens.

22 Q. Mr. El- Goarany, do you recall the specific offense that
23 you were actually convicted of?

24 A. Yeah. I plead guilty for one count grand larceny.

25 Q. Did you say grand larceny?

Hli5gam5

M. El-Goarany - direct

1 A. Yes.

2 Q. Very briefly, can you tell us what did you do that led to
3 the charges in that case?

4 A. I was on the board of director in a co-op building in
5 Queens for six years at the time and the management company
6 asked me to refer them to another buildings to get new jobs and
7 I did that.

8 Q. And in return for referring these people to other buildings
9 what, if anything, did you get in return?

10 A. They gave me some money compensation, about \$36,000.

11 Q. Did you plead guilty in that case?

12 A. Yes.

13 Q. And what punishment did you receive?

14 A. I got probation for five years from 2000 to 2005, and I had
15 to step down from the board, to resign from the board.

16 Q. Mr. El- Goarany, how old was Samy El- Goarany the last time
17 you saw him?

18 A. 24 and a few months.

19 Q. When was that?

20 A. January of '15.

21 Q. Of what year?

22 A. 2015.

23 Q. And where was Samy living at that time, Samy El- Goarany?

24 A. With us at home in Orange County, Upstate New York, and he
25 has an apartment we are renting for him and his brother in

Hli5gam5

M. El-Goarany - direct

1 Queens -- in Rego Park, Queens.

2 Q. And who was living in your home at that time?

3 A. Myself, my wife, and Samy, and Tarek.

4 Q. Was your son Samy El- Goarany in school at the time?

5 A. Yes. He was in college.

6 Q. Where?

7 A. Baruch College in Manhattan.

8 Q. Did there come a time when your son left home, your son
9 Samy?

10 A. Yes.

11 Q. About when was that?

12 A. In the middle of the week of the last week of January 2015.

13 Q. How did you learn that he had left?

14 A. He already said he was going to Queens and to hang over
15 with his friends with holiday Monday, Tuesday until the college
16 was starting Wednesday, and he left by way to Queens.

17 Q. And you didn't hear from him?

18 A. Since then I didn't hear from him.

19 Q. What, if anything, did you do initially to try to contact
20 him?

21 A. When my wife told me Tuesday morning -- I think he left on
22 Monday, the next day in the morning after he left, my wife told
23 me that she believed that Samy is going to leave out of the
24 country. I didn't believe her or I didn't -- I didn't want to
25 believe her so I started to call everyone, all his contacts and

Hli5gam5

M. El-Goarany - direct

1 friends, schools, e-mailing, messaging.

2 Q. Did you have any success?

3 A. No, I didn't.

4 Q. Did there come a time when you or someone else notified the
5 authorities that he was gone?

6 A. Yes. By the end of the week the family decided that the
7 best thing to call the authorities to report Samy's absence.

8 Q. Did there come a time when you traveled in order to look
9 for your son?

10 A. Yes.

11 Q. When was that?

12 A. In May 2015.

13 Q. And where, specifically, did you go?

14 A. First I went to Istanbul in Turkey.

15 Q. Now, Mr. El- Goarany, how did you come -- how did you
16 decide that you wanted to go to Istanbul, Turkey?

17 A. When Samy left we had the chance to go in the Facebook to
18 see his messages and posts, who he was talking to, and we found
19 that information that he traveled to Istanbul.

20 Q. Mr. El- Goarany, without getting into the contents of
21 anything you saw on Facebook, the messages, did you attempt to
22 identify people whom you wanted to ask questions?

23 A. Yes.

24 Q. And which people did you identify?

25 A. The first conversation in the Facebook was a person named

Hli5gam5

M. El-Goarany - direct

1 Jimmie Gammal and other people in Istanbul; Attiya Aboualala,
2 and another person like Abdallah Jazzar.

3 Q. And where, at the time, if you had an understanding, did
4 you understand that Jammie Gammal was located? Which country?

5 A. I believe from the Facebook in the states -- here in the
6 states.

7 Q. And how about as to, did you say Attiya Aboualala?

8 A. Attiya Aboualala in Istanbul, Turkey.

9 Q. And then the third person you mentioned was?

10 A. Same things in news, TV, news in Istanbul.

11 Q. And what was the third person's name, just to?

12 A. Abdallah al Jazzar.

13 Q. And what, if any connection, did you understand there to be
14 between Abdallah al Jazzar and Attiya Aboualala?

15 A. They both work in the same TV called Al Sharq TV, and
16 Attiya is a writer and al Jazzar is a broadcaster, talk show.

17 Q. So, Mr. El- Goarany, did you get a flight to Istanbul,
18 Turkey?

19 A. Yes.

20 Q. Did you go directly there?

21 A. Yes.

22 Q. And when you arrived in Istanbul, Turkey, what did you do?

23 A. I checked in -- I mean, a made a reservation in the hotel
24 before I left New York from Expedia to the same hotel my son
25 Samy was in.

Hli5gam5

M. El-Goarany - direct

1 Q. Is that something you had learned through your review on
2 Facebook?

3 A. From the Facebook everything with details, yeah.

4 Q. Let me also ask you about your review on Facebook. Were
5 you logged in to your own account or someone else's account?

6 A. No, Samy's account.

7 Q. How did it come to be that you logged into your son Samy's
8 Facebook account?

9 A. Samy -- Samy, before he leaves, he was in contact with his
10 older brother who have a master degree of computer and science
11 and he asked him to help him to stop harassment he received on
12 Facebook from other people. And that's why he give his brother
13 his passwords, to log in and to follow these things.

14 Q. So, is it accurate that you used that password you received
15 from your other son in order to log into the account?

16 A. Yeah. We called the other son on the same day we started
17 to look for Samy and he give me the code. Yeah.

18 Q. Thank you.

19 Now, when you arrived, did there come a time when you
20 arrived at this hotel you mentioned?

21 A. Yes.

22 Q. And when you arrived at the hotel, what did you do then?

23 A. I checked in and they -- I put my things in the room and
24 then I went back to the reception. That hotel is a small
25 hotel, different small buildings, the reception and the manager

Hli5gam5

M. El-Goarany - direct

1 in one building and the room where they give it to me in
2 another building. So, I came back with my computer to the
3 reception, I sit down there, tried to be friendly with the
4 manager to know information I want to know.

5 Q. Did there come a time when you tried to contact
6 Mr. Aboualala?

7 A. Yes. As soon as we went to the hotel I called Abdallah
8 Jazzar on the Sharq TV, yes.

9 Q. Was that the other person you had identified on Facebook?

10 A. Yes; because in the Facebook Attiya Aboualala has no
11 contacts.

12 Q. And did you ask, was the purpose of your call to Mr. Jazzar
13 to get you in touch with Mr. Aboualala?

14 A. Yes. Mr. Jazzar was a friend of Mr. Aboualala and he has a
15 big shot of on the cover page of Facebook with Aboualala.

16 Q. Did he in fact put you in touch with Mr. Aboualala?

17 A. Say again?

18 Q. Did Mr. Jazzar put you in touch with Mr. Aboualala?

19 A. Yes.

20 Q. Did there come a time when you met with Mr. Aboualala?

21 A. Yes.

22 Q. How many times did you meet with Attiya Aboualala during
23 your trip to Turkey?

24 A. Twice.

25 Q. Let's talk about the first time but, first, let me ask you,

Hli5gam5

M. El-Goarany - direct

1 why did you want to meet with Attiya Aboualala?

2 A. To find my son and that was the main reason. I want to
3 find my son, I want to hug him. I miss him. And that was the
4 only hope, that Attiya Aboualala would connect me to my son,
5 because since he left in mid-January 2015, we have no contact
6 with him. He never called me or his mother or anybody else.

7 Q. Now, you said let's talk about your first meeting with
8 Mr. Aboualala. How did you meet him and where?

9 A. Mr. Al Jazzar called me back in the hotel and I asked him
10 to connect me with Mr. Aboualala, and at the same night
11 Mr. Aboualala called me on the phone, I asked him to come meet
12 me at the hotel.

13 Q. Did he do that?

14 A. Yes.

15 Q. Now, when he first arrived at the hotel, what happened?

16 A. He came with a taxi but he did not bring the taxi to the
17 same reception or the management -- I mean the hotel entrance.
18 He came walking. He can come but he came walking to the
19 reception and he met me in the reception.

20 Q. And where, if anywhere, did you and he go next?

21 A. After half an hour talking in the reception I trying to be
22 friendly to him so I told him let's go for dinner. I was like
23 to invite him for dinner.

24 Q. Did there come a time before you left the hotel when you
25 went back to your room.

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M. El-Goarany - direct

1 A. Yes. I have to go back to the room to put my computer, my
2 laptop, all my things in the room.

3 Q. And when you did that, did Mr. Attiya Aboualala accompany
4 you or not?

5 A. Yes, he came with me from that building, the reception to
6 the building where my room is.

7 Q. And when you arrived at the building where your room was,
8 can you describe what you and he did? What happened?

9 A. Yeah.

10 Because of the way that hotel structuring, they give
11 us the key for the building and the key for the room. So,
12 Mr. Attiya came with me walking to the, about two blocks, and
13 then we went to the building. I opened the door of the
14 building and Mr. Attiya beside me and he entered the room of
15 the building before me even.

16 Q. He entered the building before you?

17 A. Yes.

18 Q. And did you then proceed to your room?

19 A. Yes. The room was in the third floor and we -- told him.
20 He asked me where was the room? I said the third floor. He
21 walked -- it is a very narrow hotel or very small, he walked in
22 the steps before me to the third floor and every floor only two
23 doors, room right and left, my room was on the right. And
24 he -- I told him room no. 30, 3-0, and he went up, he waited in
25 front of the room. I was walking slowly but he was much

Hli5gam5

M. El-Goarany - direct

1 younger than me.

2 Q. And who -- did you enter the room?

3 A. Yes. I have opened the room and I just opened the door.

4 Q. And did Mr. Aboualala enter?

5 A. He entered before me.

6 Q. And what, if anything, did he do, when he got in the room?

7 A. He was looking like somebody searching for everything in
8 the room; under the bed, he went to the bathroom, he went to
9 the closet. He was like suspecting maybe somebody is hiding in
10 the room.

11 Q. How long were you in the room with Mr. Aboualala?

12 A. 10 minutes. 15 minutes.

13 Q. And after that where, if anywhere, did you go?

14 A. After that we came down from the hotel and we took a taxi
15 and he told me -- I told him to take us to a good restaurant in
16 Istanbul and he knows because he lives there.

17 Q. So, did he do that?

18 A. Yes.

19 Q. And was it dinner that you ate with him?

20 A. Yes. We went to dinner in a restaurant, nice restaurant,
21 on a street called El Fath Street in an area around the mosque.

22 Q. About how long would you say that dinner lasted?

23 A. A couple of hours.

24 Q. During that dinner, were you the only two together at that
25 dinner? Was anyone else there?

Hli5gam5

M. El-Goarany - direct

1 A. Yes.

2 Q. You were the only two?

3 A. Say again?

4 Q. You were the only two at that dinner?

5 A. Yes.

6 Q. Now, during that dinner what, if anything, did Attiya
7 Aboualala say about his prior interactions with your son Samy?

8 A. He told me that he met Samy for a couple of hours in the
9 same area where we were. Even from the window of the
10 restaurant, he pointed at the subway station across the street;
11 here where I met your son Samy for two hours, but -- and he,
12 after that, my son -- he said my son left him.

13 MR. DEFILIPPIS: Your Honor, I would like to publish
14 Government Exhibit 145, which is a video entered by
15 stipulation.

16 THE COURT: Very well.

17 MR. DEFILIPPIS: And we will direct the jury to
18 Exhibit 145-T in your jury binder.

19 And, Ms. Quinones, if we can just bring up an initial
20 screenshot of the video before we play it?

21 (Continued next page)
22
23
24
25

H1I3GAM6

M. El-Goarany - direct

1 (Video recording playing)

2 MR. DeFILIPPIS: May I approach briefly, your Honor?

3 THE COURT: You may.

4 Q. Mr. El-Goarany, I'm going to give you a copy of the
5 transcript so you can follow along as well.

6 Mr. El-Goarany, just seeing those first few seconds
7 there, do you recognize this video?

8 A. Yes.

9 Q. Tell us what you know about it? How did this come to be
10 recorded?

11 A. This is the restaurant where I went with Mr. Attiya
12 Aboualala. He choose the restaurant, and we're having dinner
13 there and he choose the plate also, so I have no idea. And
14 they were making this, he said this is a very nice kind of
15 plate. They were cooking in front of us.

16 Q. Mr. El-Goarany, who recorded this video?

17 A. Mr. Attiya Aboualala gave his phone to one of the waitress
18 in the hotel and the restaurant, or the manager maybe.

19 MR. DeFILIPPIS: Ms. Quinones, will you continue
20 playing the video.

21 (Video recording playing)

22 Q. Just pausing briefly, Mr. El-Goarany, is that you on the
23 left there?

24 A. Yes.

25 Q. Who is depicted on the right-hand side?

H1I3GAM6

M. El-Goarany - direct

1 A. This is Mr. Attiya Aboualala.

2 MR. DeFILIPPIS: Continue.

3 (Video recording playing)

4 Q. Mr. El-Goarany, did you see Mr. Aboualala make a sign with
5 his hand there?

6 A. Yeah, he make a sign with four fingers. Like that.

7 Q. What, if anything, does that sign mean to you?

8 A. This is the symbol of the people of Muslim Brotherhood, and
9 they believe in the Muslim Brotherhood.

10 Q. Did you say the Muslim Brotherhood?

11 A. Yes.

12 Q. What, if anything -- we'll see it on the video -- but what,
13 if anything, did you do after that?

14 A. I want to show I'm not support of the Muslim Brotherhood, I
15 don't agree with them, and I moved my right hand with five
16 fingers.

17 Q. What did you mean to signify with five fingers?

18 A. Number one to say I'm not Muslim Brotherhood. Number two,
19 this in our culture when you put this with someone in the face
20 of somebody, you're saying "don't push my luck" or something
21 like that.

22 Q. Don't push my luck?

23 A. To protect myself.

24 MR. DeFILIPPIS: Let's continue.

25 (Video recording playing)

H1I3GAM6

M. El-Goarany - direct

1 Q. Mr. El-Goarany, would you agree that you looked happy and
2 relaxed in that video?

3 A. Yes. I look like that.

4 MS. MIRON: Objection, your Honor.

5 THE COURT: Overruled.

6 A. Can you say it again?

7 Q. Sure. Would you agree that you appeared to be happy and
8 relaxed in that video?

9 You can answer.

10 A. Yes.

11 Q. At the time, were you in fact happy and relaxed?

12 A. Absolutely not.

13 Q. But why were you appearing that way?

14 A. I just want to get his trust. Until this moment he didn't
15 tell me anything about my son except he met him only for two
16 hours and that's not the purpose of my trip.

17 Q. Mr. El-Goarany, if I can just briefly direct you to page
18 six of the transcript in front of you.

19 A. Yes.

20 Q. Do you see at the top, you're indicated in the pink
21 writing. There you ask "Do you know Abdullah from here or from
22 Egypt." Do you see that part?

23 A. Yes.

24 Q. And Attiya Aboualala says "Abdullah I know him from here,
25 from Turkey."

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M. El-Goarany - direct

1 A. Yes.

2 Q. What Abdullah is being referred to here?

3 A. He is the key that I reach Attiya. Attiya has no contact
4 with Facebook, and in the cover page of the Facebook, of the
5 cover page of the Facebook of Attiya was Al Gazar was full of
6 other people. So when I tagged on everyone name, the only one
7 have connection with Abdullah Gazar. And he the one who took
8 me to meet Attiya.

9 Q. The man you referenced earlier?

10 A. Yes.

11 Q. Let me ask you after that first meeting with Mr. Aboualala,
12 did there come a time when you heard from your son Samy?

13 A. Yes. Next day in the morning at about 11 o'clock Samy
14 called me.

15 Q. How did he reach you?

16 A. He called my phone from his phone.

17 Q. Were you still in Turkey at that time?

18 A. I was in the room in shower in the hotel. I came out of
19 the shower. It was good to hear from Samy, yes.

20 Q. What, if anything, did Samy say to you about where he was
21 and what he was doing there?

22 A. He said he's in Syria, far from me. About 300 miles.
23 That's what he said.

24 Q. What, if anything, did he say about whether he could see
25 you?

H1I3GAM6

M. El-Goarany - direct

1 A. I was begging him to see him. To come to me to meet with
2 me or I can come to him, but he was not helping me. He never
3 told me where he is. And he said it is dangerous for me to go
4 and it is not easy to go.

5 Q. Now, after that phone call, did you have any further
6 meetings with Attiya Aboualala?

7 A. Yeah, one hour later, Attiya Aboualala called me.

8 Q. Did you agree to meet him?

9 A. Yes, he was -- yes.

10 Q. How long after the phone call you received from Samy was
11 that second meeting?

12 A. In the afternoon. In the -- yeah, the afternoon. It was
13 three, four hours.

14 Q. Where did you and Mr. Aboualala meet?

15 A. He told me to meet with him in Al Fatih Mosque in Istanbul.

16 Q. Was that near your hotel?

17 A. No, it's not very close but I took a taxi to go there.

18 Q. At the Al Fatih Mosque, was it just you and Mr. Aboualala?

19 A. Yes.

20 Q. About how long were you there?

21 A. Half an hour.

22 Q. Where, if anywhere, did you go after that?

23 A. We went to a hotel. He ask me to go to a hotel to meet one
24 of the former minister in Egypt coming from overseas and he
25 wants to introduce me to him.

H1I3GAM6

M. El-Goarany - direct

1 Q. Did you say a former minister of Egypt?

2 A. Yeah. When the Muslim Brotherhood was in charge in Egypt,
3 the government, he was a minister there and he was a
4 Congressman also.

5 Q. So he was a Congressman? Is that what you meant by
6 minister?

7 A. Yes.

8 Q. And where did you, Mr. Aboualala, and the minister from
9 Egypt meet?

10 A. He took me to the hotel. His name is Bassem I believe. So
11 I met him in his hotel.

12 Q. Was Mr. Aboualala there?

13 A. Yeah, he took me there.

14 Q. For how long did you meet with them?

15 A. In the hotel, for another half an hour.

16 Q. Did you go anywhere after that?

17 A. Yeah. Mr. Aboualala invited me and Bassem for dinner the
18 same day.

19 Q. About how long did that dinner last?

20 A. One and a half hours.

21 Q. During that dinner, what, if anything, did Mr. Aboualala
22 say about your son and what he might be doing?

23 A. Mr. Aboualala told me, like, he was making, like, fun of
24 me, like a joke. But it wasn't joke for me. He told me he --
25 or he was talking to Bassem, and he say it is funny to be here

H1I3GAM6

M. El-Goarany - direct

1 sitting in the table, Bassem is a minister of the Muslim
2 Brotherhood, they consider themselves to be Brotherhood because
3 they never -- agreed with what the changes have been in Egypt.
4 And Mohammed or Mr. El-Goarany, which is me, is a retired
5 career engineer with the Egyptian Army, which is Sisi support.
6 Sisi is the president of Egypt. And I'm a Muslim Brotherhood
7 activist or administrator, and El-Goarany son Samy is now in
8 Syria fighting with Daesh.

9 Q. That word "Daesh," what does that mean or what did you
10 understand it to mean?

11 A. It is the Arabic word they call it for the ISIS or for the
12 Dawla Islamiya.

13 Q. Was that the first time Mr. Aboualala mentioned that your
14 son was with Daesh or ISIS?

15 A. Yes.

16 Q. After that dinner, and before you returned to the United
17 States, did you communicate again with your son Samy?

18 A. Yes, we were talking in a daily basis, because it was very
19 good thing to hear from him.

20 Q. During those conversations, what, if anything, did he tell
21 you about what organization or group, if any, he was with?

22 A. He said he is with al-Dawla and he is now taking religious
23 training. And after the religious training he will take
24 military training. Until they could certify him or he, they
25 would consider him one of them, certified as one of them, and

H1I3GAM6

M. El-Goarany - direct

1 then he can travel. That was the reason I want to see him.

2 Q. And when you referenced the word "Dawla," he said he was
3 with Dawla?

4 A. Yes.

5 Q. What does that mean?

6 A. Dawla is the other name for Daesh or they consider
7 themselves, Dawla is a country or the state. Like United States.
8 Dawla. Dawla.

9 Q. So when you heard that word, what group did you understand
10 him to be referring to?

11 A. I understand that he was Daesh, to confirm what Attiya was
12 saying.

13 Q. Did you go straight back to the United States from Turkey?

14 A. No, I went to Egypt for another 10 days.

15 Q. What were you doing in Egypt?

16 A. In May 13 is the anniversary of our graduation day. I
17 graduate from the college in 1971, so after 1996, we started to
18 meet from the silver anniversary every year on May 13. My
19 colleague, all my colleagues.

20 Q. After that stop, then did you return to the United States?

21 A. Yes, I returned to the United States. To New York, J.F.K.

22 Q. When you arrived back in the United States, did there come
23 a time when you spoke with law enforcement?

24 A. Yes.

25 Q. How soon after you got back was that?

H1I3GAM6

M. El-Goarany - direct

1 A. They were waiting for me at the door of the airplane.

2 Q. Did you speak with them about your trip?

3 A. Yes.

4 Q. During those conversations with law enforcement, were you
5 truthful to law enforcement about what you had learned about
6 your son?

7 A. No.

8 Q. What did you tell them that was not truthful?

9 A. I told them that my son is with the Muslim Brotherhood in
10 Syria.

11 Q. Why did you tell them that?

12 A. To protect my son. I was still hoping that my son can come
13 back, and I didn't want him to be arrested as a terrorist man.
14 And because Muslim Brotherhood is not terror group yet in
15 America.

16 Q. Did you eventually tell the FBI about everything you
17 learned and about what you knew?

18 A. Yes.

19 Q. Mr. El-Goarany, are you testifying today pursuant to a
20 particular agreement?

21 A. Yes.

22 Q. Let me put in front of you what's been marked Government
23 Exhibit 1019.

24 MR. DeFILIPPIS: If I may approach, your Honor.

25 THE COURT: You may.

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M. El-Goarany - direct

1 Q. Mr. El-Goarany, do you recognize that agreement?

2 A. Yes.

3 Q. What is it?

4 A. It is a non-prosecution agreement signed with the
5 prosecutors, not to prosecute me for my testifying.

6 MR. DeFILIPPIS: Your Honor, the government offers
7 Government Exhibit 1019.

8 THE WITNESS: Can you say it again?

9 MR. DeFILIPPIS: I was speaking to the judge.

10 MS. MIRON: No objection.

11 THE COURT: Government Exhibit 1019 will be received.

12 (Government's Exhibit 1019 received in evidence)

13 Q. Mr. El-Goarany, based on your understanding, what has the
14 government agreed to do in this agreement?

15 A. To say the truth.

16 Q. No --

17 A. Nothing but the truth.

18 Q. I'm sorry, Mr. El-Goarany. What has the government agreed
19 to do?

20 A. Say it again?

21 Q. What has the government agreed to do in this agreement?

22 A. Not to prosecute me if I saying the truth. I'm not hiding
23 anything else.

24 Q. Not to prosecute you for what?

25 A. For the -- for lying to the FBI.

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M. El-Goarany - direct

1 Q. Does your ability to benefit from this agreement depend in
2 any way on the outcome of this trial?

3 A. I don't understand the question.

4 Q. Is it, does it matter one way or the other under this
5 agreement whether the defendant is found guilty or not guilty
6 at this trial?

7 A. No.

8 Q. Mr. El-Goarany, after you returned to the United States,
9 did you keep in touch with your son for some time?

10 A. Yes.

11 Q. Did there come a time when you learned of the arrest of
12 someone named Ahmed Mohammed El Gammal?

13 A. Yes.

14 Q. After you learned about that arrest, did you speak to
15 Mr. Attiya Aboualala?

16 A. Yes.

17 Q. What, if anything, did Attiya Aboualala say to you with
18 regard to that arrest?

19 A. Mr. Attiya --

20 MS. MIRON: Your Honor, may we have a side bar?

21 THE COURT: Sure.

22 (Continued on next page)

H1I3GAM6

M. El-Goarany - direct

1 (At the sidebar).

2 MS. MIRON: We don't know exactly what answer will be
3 elicited --

4 MS. SHROFF: I think he's talking to someone.

5 THE COURT: He's talking to Jazmin.

6 MS. MIRON: It seems to call for both hearsay and pose
7 a confrontation clause problem.

8 MR. DeFILIPPIS: Your Honor, for the reasons stated
9 yesterday with regard to the statements, this is not, it
10 doesn't in any way implicate the --

11 MS. SHROFF: He's talking directly to the jury.

12 THE COURT: Mr. El-Goarany, please don't address
13 anyone. When a question is asked, you may answer the question.

14 THE WITNESS: I'm thirsty.

15 THE COURT: Ms. Rivera will get you some water.

16 MR. DeFILIPPIS: Your Honor, I think for the very same
17 reasons stated yesterday, Mr. El-Goarany was -- there is
18 nothing testimonial about statements that Mr. Aboualala made to
19 Mr. El-Goarany. These actually were essentially the subject of
20 the Court's in limine ruling about the post-arrest what the
21 government has deemed coverup efforts.

22 Again, we never know what a witness will say, but we
23 expect he'll say something along the lines of that
24 Mr. Aboualala asked Mr. El-Goarany to help El Gammal, including
25 possibly by lying to the FBI. So I think it falls squarely

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M. El-Goarany - direct

1 within the Court's in limine ruling.

2 THE COURT: Was this over the phone?

3 MR. DeFILIPPIS: It was over the phone, yes, your
4 Honor.

5 THE COURT: Okay.

6 MR. HABIB: The testimony will be that Attiya asked
7 the witness to help Mr. El Gammal by lying to the FBI?

8 MR. DeFILIPPIS: By, among other things, and again, I
9 can't speak for the witness but --

10 MS. SHROFF: You prepared him, right?

11 MR. DeFILIPPIS: And which is relevant both because it
12 falls within the in limine ruling of the communications on that
13 issue, and also because of the fact that it was said and how it
14 affected subsequent actions and communications.

15 MR. HABIB: What is the hearsay exception?

16 MR. DeFILIPPIS: So the co-conspirator statement was
17 the rationale of the Court's ruling, among other things.

18 MR. HABIB: First of all, we would object on the
19 ground that the conspiracy had terminated and on the ground
20 that efforts to conceal the conspiracy don't fall within the
21 exception.

22 MR. DeFILIPPIS: Your Honor, again, this was the
23 subject of briefing. Our contention is that the conspiracy in
24 fact had not at all ended. The arrest pursuant to the cases we
25 cited in our brief, the arrest of one co-conspirator does not

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M. El-Goarany - direct

1 end a conspiracy. And it was an object of this conspiracy from
2 the very beginning to conceal the method and means by which
3 Samy and others traveled to ISIS territory.

4 MR. HABIB: We've briefed it and I'm happy to retrieve
5 the cases if the Court wants, but it is my recollection from
6 the motion in limine briefing there is Second Circuit and
7 Supreme Court authority that statements made during the pure
8 concealment phase of a conspiracy are not in furtherance of a
9 conspiracy. And that if what the government is saying were
10 true, then every conspiracy could be assumed to include an
11 objective to conceal it, then no conspiracy would ever end. I
12 think that's the Supreme Court's decision I believe it is
13 *Krulewitch*, a case from the '50s.

14 MR. DeFILIPPIS: The Second Circuit's *Persico* case, it
15 was organized crime where one co-defendant was arrested, and
16 the others continued, and this was the subject of your Honor's
17 ruling, but the idea that Samy El-Goarany continued to provide
18 himself as personnel to ISIS, and continued, and Aboualala
19 continued to further their initial objective of concealing his
20 transit devices, the conspiracy continued.

21 MR. HABIB: They're no longer concealing where Samy is
22 or what he's doing.

23 MR. DeFILIPPIS: It was concealing the means by which
24 he traveled, namely through Gammal and others.

25 MR. HABIB: Again --

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1 MS. SHROFF: That's clearly not the subject of the --

2 THE COURT: It is almost 4 o'clock. This is very
3 interesting so let's continue. Let me send the jury home.
4 Okay.

5 MS. SHROFF: Your Honor, could we have a minute to
6 pull the case.

7 THE COURT: Sure.

8 MR. HABIB: In light of the time, your Honor, we write
9 every day, so we're happy to write on it too.

10 THE COURT: Okay.

11 (In open court)

12 THE COURT: Ladies and gentlemen, it is almost
13 4 o'clock, so rather than keep you we're going to end it for
14 today. Please have a very pleasant evening. Please do not
15 discuss the case, please do not read anything about the case or
16 listen to any news coverage of the case. Please don't do any
17 research.

18 we'll see you bright and early tomorrow morning.
19 Please be in the jury room no later than 9:20. Thank you so
20 very much.

21 (Jury excused)

22 THE COURT: Mr. El-Goarany, you may step down.

23 THE WITNESS: Should I leave?

24 THE COURT: Yes.

25 (Witness temporarily excused)

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1 THE COURT: We can continue the conversation. I know
2 Mr. Habib asked for the opportunity to submit something in
3 writing. I am happy to give you folks the opportunity. So we
4 can continue to talk or we can break now or discuss something
5 else.

6 MR. DeFILIPPIS: Your Honor, the government of course
7 would be fine if Mr. Habib would like to put something in in
8 writing. But I do think, the government's view is this is not
9 a close question. I think effectively it was decided by your
10 Honor's rulings in the motions in limine, and especially now,
11 given that the defense has offered communications of
12 Mr. Aboualala on this very topic with the third party in which
13 they're discussing the defendant's arrest, again, all the more
14 reason why what's good for one side has to, in fairness, be
15 good for the other. And again we think this was resolved
16 pretrial, but obviously we won't prevent anyone from writing on
17 anything.

18 THE COURT: Okay.

19 MR. HABIB: We're happy to write on it, your Honor.

20 THE COURT: Very well. Then I will await your
21 submission.

22 In the meantime, is there anything else that we need
23 to or should discuss this afternoon?

24 MR. QUIGLEY: Just in terms of housekeeping, your
25 Honor. As I said I think last week we were on pace and that

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1 means from our perspective there is a good chance we'll rest
2 tomorrow. We have about three more witnesses.

3 THE COURT: Okay.

4 MR. QUIGLEY: So, we've asked defense, just for the
5 record, about their case, they provided some information. Not
6 a ton, but just in terms of getting -- we'd like to get their
7 witnesses and figure out who we're going to have to be
8 preparing cross for. I don't know if the Court wants to
9 schedule a charge conference at some point or if that is
10 premature. Also it would be good to know in terms of length of
11 the defense case, because we may have, obviously we're not
12 planning to put on a rebuttal case now, but we may have some
13 people lined up just in case.

14 THE COURT: Obviously not holding you to anything,
15 Ms. Shroff, but, is the defense in a position to make some
16 representation about any defense case at this point?

17 MS. SHROFF: I e-mailed them this morning in light of
18 them being ahead of schedule because we were supposed to start,
19 if the Court recalls, we anticipated putting on a defense case
20 on I think Monday is the 23rd. We have reached out to our
21 witnesses, including the expert witness, we're waiting to hear
22 back. We're actually trying to convince Professor Marsh to see
23 if he can accommodate us by testifying earlier. He seems
24 somewhat unable to, given his commitments at Yale, but we're
25 still trying. And that's the same with everybody else that

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1 we've informed the government of.

2 I have actually responded to them this -- as much as I
3 know, they know. Because they are actually a day and a half
4 ahead of schedule. And I am trying to --

5 THE COURT: Okay. And the witnesses you have
6 tomorrow, I guess Mr. El-Goarany will be on for some period of
7 time longer on direct?

8 MR. DeFILIPPIS: Yes, not much longer though, your
9 Honor. We're nearing the end of it.

10 THE COURT: Very well. And the balance of the three
11 witnesses, are they in the nature of document custodians?

12 MR. QUIGLEY: Your Honor, we're going to try to avoid
13 calling any more document custodians. We have a witness, a
14 phone examiner from the FBI who is one of our experts, and then
15 a summary witness, a paralegal at the end.

16 THE COURT: Let's see how far we get tomorrow. And
17 whether the defense if they're going to put on a case will be
18 in the position to put on any witnesses, if not tomorrow, then
19 Friday. Obviously it is always a good thing when we're moving
20 faster than we hoped, so I'm not going to begrudge anyone from
21 finishing up sooner than later. And it may be that we'll have
22 to give the jury maybe a half day at some point, maybe at the
23 end of the week, depending on the availability of the defense
24 witnesses. But we will try to get you a draft of the charge by
25 end of day tomorrow at some point. So if we can, we can have a

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1 jury charge on Friday if we have some time.

2 MR. QUIGLEY: A charge conference, your Honor?

3 THE COURT: I'm sorry?

4 MR. QUIGLEY: A charge conference?

5 THE COURT: Yes.

6 MR. QUIGLEY: Okay.

7 THE COURT: What did I say?

8 MR. QUIGLEY: You said a charge.

9 I would anticipate, it doesn't sound like under
10 anybody's view we will be closing on Friday.

11 MS. SHROFF: I think the government's pretty aware
12 that we have the expert Mr. Roloff testifying on Monday. So, I
13 think that answers Mr. Quigley's question that there is no
14 chance we would be closing on Friday.

15 MR. QUIGLEY: That's fine, your Honor.

16 THE COURT: That's why I suggested that we may need to
17 give the jury a little extra time on Friday if we don't have
18 witnesses available.

19 MR. QUIGLEY: Okay, great.

20 MS. SHROFF: I think we are also going to have an
21 objection on the government's purported summary witness, but we
22 will let the Court know as we move along.

23 THE COURT: Very well. Who is this summary witness
24 and what is he going to purport to summarize?

25 MR. DeFILIPPIS: It will be paralegal Jake Sidransky

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1 who is sitting behind me of the summary chart we prepared
2 pursuant to Rule 1006. Simply a visual representation that
3 combines various exhibits or portions of exhibits in the case,
4 including Facebook communications, messaging communications,
5 toll records, and cell site location records, again for the
6 very purpose set out in Rule 1006 which is to present evidence
7 to the jury that is voluminous, and under several Second
8 Circuit cases this has been allowed fairly routinely.

9 THE COURT: Will this be in the nature of charts or
10 video or PowerPoint or what type of media?

11 MR. DeFILIPPIS: We can hand up to you the current
12 draft of the chart if you'd like to see it.

13 THE COURT: Very well.

14 MS. SHROFF: Your Honor, if you can take a look at the
15 compilation that they intend to put into evidence, because it
16 is a verbatim assimilation of the testimony and essentially
17 cumulative and it's the government's essential third summation.
18 So, if you can just take a look -- I think we can argue this
19 later. But I think the rule in and of itself, Rule 1006, I do
20 not think that either this case, which has been less than two
21 weeks on its direct, falls within the ambit of the rule.

22 And in fact, what they've provided to the Court, which
23 is not a summary, a calculation, or something that synthesizes
24 voluminous writings or recordings, falls within the category of
25 a summary exhibit. But as I said, your Honor, we can address

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1 it if and when we get there.

2 THE COURT: Very well.

3 MS. SHROFF: Thank you.

4 THE COURT: Okay.

5 MR. DeFILIPPIS: Thank you, your Honor.

6 THE COURT: Anything else?

7 MR. DeFILIPPIS: Not from the government, your Honor.

8 MS. MIRON: No, your Honor.

9 THE COURT: We'll see you tomorrow. Be here at
10 9 o'clock tomorrow.

11 (Adjourned until January 19, 2017, at 9 a.m.)

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